Supreme Court, U. S.
APR 19 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1513

MICHAEL J. HOWLETT, Secretary of State of Illinois, in his official capacity,

Appellant,

v.

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENT

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
160 North LaSalle Street, Suite 800,
Chicago, Illinois 60601, (793-3500),

Attorney for Appellant.

PAUL J. BARGIEL,
STEPHEN R. SWOFFORD,
Assistant Attorneys General,
160 North LaSalle Street, Suite 800,
Chicago, Illinois 60601, (793-5635),

Of Counsel.

KEENAN PRINTING COMPANY — 365

INDEX

	Page
Jurisdictional Statement	2
Opinion Below	2
Jurisdiction	2
Statute Involved	3
Question Presented	4
Statement of the Case	5
Argument	9
Conclusion	17
Appendix A—Memorandum Opinion and Order	A1
Appendix B—Injunction Order	B1
Appendix C—Notice of Appeal	C1
Appendix D—Illinois Revised Statutes, Chapter 95½, Section 6-206	D1
Appendix E—Rule 6-206 of the Rules and Regulations under the Illinois Vehicle Code	E1

TABLE OF AUTHORITIES

Bell v. *Burson*, 402 U.S. 535, 29 L. Ed. 2d 90, 91 S. Ct. 1586 (1971); 3, 9

Bibb v. *Navajo Freight Lines*, 359 U.S. 520, 3 L. Ed. 2d 1003, 79 S. Ct. 962 (1959); 10

Broughton v. *Warren*, 281 A. 2d 625 (1971); 16

Cafeteria Workers v. *McElroy*, 367 U.S. 886, 9 L. Ed. 2d 1230, 81 S. Ct. 1743 (1961); 9

Goss v. *Lopez*, 419 U.S. 565, 42 L. Ed. 2d 725 (1975);.. 15

Mullane v. *Central Hanover Trust Co.*, 339 U.S. 306, 94 L. Ed. 2d 865 (1950); 9

Stauffer v. *Weedlun*, 188 Neb. 105, 195 N.W. 2d 218 (1972); 14

State v. *Skinner*, 207 N.W. 2d 495 (N.D. 1973); 16

United States v. *Georgia Public Service Commission*, 371 U.S. 285, 9 L. Ed. 2d 317, 83 S. Ct. 397 (1963). .. 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No.

MICHAEL J. HOWLETT, Secretary of State of Illinois, in his official capacity,

Appellant,

v.

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENT

JURISDICTIONAL STATEMENT

Appellant, Michael J. Howlett, Secretary of State of Illinois, appeals from the final judgment of a three-judge court in the United States District Court for the Northern District of Illinois, Eastern Division. Appellant respectfully submits this Statement to demonstrate that the Supreme Court of the United States has jurisdiction of this appeal and that substantial questions are presented.

OPINION BELOW

The Memorandum Opinion and Order of the United States District Court, Northern District, Eastern Division, which is the subject of this appeal, is not yet officially reported. The opinion and a separate injunction order entered in this case are reprinted herein at Appendices A and B.

JURISDICTION

Appellee, Dennis N. Love, instituted this class action against the appellant under 28 U.S.C., §§ 1331, 1343, 2201 and 2202 and 42 U.S.C., § 1983 challenging section 6-206(a)(3) of the Illinois Motor Vehicle Code (Ill. Rev. Stat. 1975, ch. 95½, § 6-206(a)(3)), on the ground that it denies appellee due process of law in violation of the fourteenth amendment to the United States Constitution. Section 6-206(a)(3), as applied through administrative rules, and with reference to related statuory provisions, authorizes the Secretary of State of Illinois to suspend or revoke a driver's license without preliminary hearing, based on the driver's traffic convictions and the number of points the driver has accumulated on those convictions. Appellee alleged this

section was unconstitutional both on its face and as applied, and sought declaratory and injunctive relief.

A three-judge court, convened pursuant to 28 U.S.C., §§ 2281 and 2284, entered a permanent injunction granting appellee the relief sought on January 20, 1976. The district court held that the statute denied appellee adequate notice and hearing in violation of the fourteenth amendment to the United States Constitution.

The appellant, Michael J. Howlett, filed his notice of appeal in the district court on February 18, 1976, a copy of which is reprinted at Appendix C. Jurisdiction of the Supreme Court of the United States to review this case by direct appeal is conferred by 28 U.S.C. § 1253. The following decisions sustain the jurisdiction of this Court to review this judgment on direct appeal from a three-judge district court:

Bell v. *Burson*, 402 U.S. 535, 29 L. Ed. 2d 90, 91 S. Ct. 1586 (1971);

United States v. *Georgia Public Service Commission*, 371 U.S. 285, 9 L. Ed. 317, 83 S. Ct. 397 (1963).

STATUTE INVOLVED

Section 6-206 of the Illinois Motor Vehicle Code, Illinois Revised Statutes 1975, chapter 95-½, is reprinted in relevant part at Appendix D.

QUESTION PRESENTED

Whether section 6-206(a)(3) of the Illinois Motor Vehicle Code (Ill. Rev. Stat. 1975, ch. 95½, § 60-206(a)(3)), which authorizes the Secretary of State of Illinois to suspend or revoke a driver's license without preliminary hearing based on the number of traffic violations for which the driver has been convicted and the number of "points" accumulated on those convictions, affords the driver due process of law.

STATEMENT OF THE CASE

The appellee, Dennis N. Love, (hereinafter referred to as "plaintiff"), instituted this class action to enjoin appellant-defendant, Michael J. Howlett, (hereinafter referred to as the "Secretary of State"), from revoking the plaintiff's driver's license, and the licenses of others similarly situated, pursuant to an alleged unconstitutional provision of the Illinois Motor Vehicle Code. Section 6-206(a)(3) of the Code (Ill. Rev. Stat. 1975, ch. 95-½, § 6-206(a)(3)) authorizes the Secretary of State to suspend or revoke the license of any driver without preliminary hearing based on the information contained in the driver's record.

On May 28, 1975, the Secretary of State mailed the plaintiff a notice of an order revoking his driver's license, effective June 6, 1975. Plaintiff thereupon filed the instant suit in the district court, which on June 6th granted plaintiff's motion for a temporary restraining order, pending a full hearing on the issues in the case. The temporary restraining order was conditioned on plaintiff's applying for a hardship license, which plaintiff subsequently applied for and which was granted.

In his complaint, filed June 5, 1975, plaintiff challenges the constitutionality of section 6-206(a)(3) of the Code, pursuant to which his license had been revoked, and seeks to enjoin the enforcement of this statute. Plaintiff asserts that this section violates the due process clause in that it denies plaintiff a hearing prior to revocation.

Section 6-206(a)(3) authorizes the Secretary of State to revoke or suspend the license of any person without preliminary hearing upon a showing by the licensee's record that such person has been repeatedly convicted of vio-

lations which indicate the lack of ability to exercise ordinary and reasonable care or indicate disrespect for traffic laws and the safety of others. Following revocation, the licensee is entitled to a hearing under section 2-118 of the Code. Ill. Rev. Stat. 1975, ch. 95-½, § 2-118.

Rule 6-206(a)(3) of the Rules and Regulations under the Illinois Vehicle Code, promulgated by the Secretary of State pursuant to section 2-104 of the Code (Ill. Rev. Stat. 1975, ch. 95-½, § 2-104), provides that a driver who has had his license suspended three times within a ten-year period shall have his license revoked. Section 6-206(a)(2) of the Code and Rule 6-206(a)(2) authorize the Secretary of State to suspend a license without preliminary hearing upon the licensee's conviction for three traffic offenses within a 12-month period. The length of the suspension is governed by the number of points a driver has accumulated on those convictions, each type of offense being assigned a certain number of points according to its severity. Certain minor offenses (Ill. Rev. Stat. 1973, ch. 95-½, § 6-204(a)(2)) do not count toward suspension and have no points assigned to them. Rule 6-206 is reprinted in relevant part at Appendix E.

The plaintiff's driving record, reported from 1968, shows numerous convictions for traffic violations. Plaintiff's license was first suspended on November 4, 1969, for a period of two months, pursuant to section 6-206(a)(2) of the Code, and Rule 6-206(a)(2) (three convictions in 12-month period). His license was suspended a second time on March 17, 1970, for a period of two months upon his conviction for operating a vehicle while his license was suspended, pursuant to section 6-303(b) of the Code (Ill. Rev. Stat. 1975, ch. 95-½, § 6-303(b), which requires the Secretary to take such action.

On March 31, 1975, the plaintiff was convicted of his third speeding violation within a seven-month period. The Secretary had sent plaintiff a letter warning that a third conviction would result in the loss of his driving privileges on March 27th. Thereafter, the plaintiff's license was revoked pursuant to section 6-206(a)(3) of the Code and Rule 6-206(a)(3) (three suspensions within a ten-year period). The district court found it immaterial that the Secretary had not taken the intermediate step of suspending plaintiff's license for his three convictions in one year, pursuant to section 6-206(a)(2) of the Code and Rule 6-206(a)(2) (Appendix A, p. A6).

The plaintiff's complaint alleges that a revocation under section 6-206(a)(3) is a denial of due process of law in that it fails to provide adequate notice and hearing on the issue of such revocation prior to the actual revocation. A second count alleges that the statute is unconstitutionally vague in violation of due process of law because the statute fails to adequately inform the licensee of the standards used to determine if revocation is applicable.

Plaintiff's request for a hearing by a three-judge panel on the issue of the constitutionality of section 6-206(a)(3) was granted on June 9, 1975. The three-judge court entered its Memorandum Opinion and Order on January 20, 1976, on cross motions for summary judgment. The court held that plaintiff's right to procedural due process was denied by the practice of the Secretary under section 6-206(a)(3), because a separate hearing on the issue of revocation was not provided prior to the actual issuance of a revocation order. The court found it unnecessary to rule on plaintiff's vagueness challenge to the statute in view of its holding on the procedural due process issue. The court also entered a separate injunction order, *nunc pro tunc,* as of January

20, 1976, on April 13, 1976, clarifying its original order. The latter order concludes that section 6-206(a)(3) is unconstitutional, and enjoins the Secretary from enforcing that section. The third member of the panel, the Honorable Richard W. McLaren, United States District Court, did not sign this order because he was deceased.

The plaintiff's class was never certified.

ARGUMENT

THE REVOCATION OR SUSPENSION OF A DRIVER'S LICENSE WITHOUT A PRIOR HEARING, BASED ON THE NUMBER OF TRAFFIC VIOLATIONS FOR WHICH A DRIVER HAS BEEN CONVICTED AND THE NUMBER OF "POINTS" ACCUMULATED ON THOSE CONVICTIONS, COMPORTS WITH PRINCIPLES OF DUE PROCESS OF LAW.

The Illinois procedure, whereby a driver's license is suspended or revoked for excessive convictions for traffic offenses, effects a valid constitutional accommodation of the conflicting interests of the State and the licensee. The district court was able to reach an opposite conclusion only by construing Illinois law in a way most likely to cast doubt on its validity, and then mechanically applying this Court's decision in *Bell* v. *Burson,* 402 U.S. 535, 29 L. Ed. 2d 90, 91 S. Ct. 1586 (1971), without even identifying any substantial interest that would be served by a prerevocation hearing.

The interpretation and application of the due process clause does not lend itself to the promulgation of an inflexible procedure universally applicable to every situation. *Cafeteria Workers* v. *McElroy,* 367 U.S. 886, 895, 6 L. Ed. 2d 1230, 81 S. Ct. 1743 (1961). The concept requires only that the deprivation of property interests be preceded by notice and an opportunity to be heard appropriate to the nature of the case. *Mullane* v. *Central Hanover Trust Co.,* 339 U.S. 306, 94 L. Ed. 865 (1950).

A determination of what process is due necessarily requires a balancing of the competing interests of the parties involved. Here, the plaintiff's interests in not having

his driver's license revoked pursuant to section 6-206(a)(3) of the Illinois Code must be balanced against the strong interest of the State of Illinois in the protection of the health and safety of its citizens. Specifically, the interest of the plaintiff which a prerevocation hearing would serve must be weighed against the State's interest in the speedy removal of a safety hazard from its highways. The state unquestionably has the right to regulate the use of its highways and to limit their use to those who would not present a risk to the public health and safety. *Bibb* v. *Navajo Freight Lines,* 359 U.S. 520, 3 L. Ed. 2d 1003, 79 S. Ct. 962 (1959).

In *Bell* v. *Burson* this Court held that once a driver's license was issued by the state, it was not to be taken away without the procedural due process required by the fourteenth amendment of the United States Constitution 402 U.S. at 539, 29 L. Ed. 2d at 94. It is submitted that section 6-206(a)(3) of the Illinois Code and the Secretary's practices under that section provide such due process, and that the plaintiff in this case has had an opportunity to be heard appropriate to the nature of the case.

Section 6-206(a)(3) of the Code provides:

> (a) The Secretary of State is authorized to suspend or revoke the license or permit of any person without preliminary hearing upon a showing by his records or other sufficient evidence that such person:
>
> • • •
>
> 3. Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway:

This section must be viewed in light of the rules and regulations promulgated by the Secretary of State and other related statutory provisions. These rules and regulations, adopted pursuant to valid legislative authority, have the force and effect of law. Ill. Rev. Stat. ch. 95½, !2-104; ch. 127, §263 *et seq.*

Section 6-206(a)(2) of the Code authorizes the Secretary to suspend the license of a driver without preliminary hearing based upon a showing by his records that he has been convicted of three traffic violations within a 12-month period "so as to indicate the disrespect for the traffic laws and a disregard for the safety of other persons on the highway" (See Appendix D). Under Rule 6-206(a)(2), the Secretary may suspend the license of a driver convicted of three violations within a 12-month period, with the length of the suspension dependent on the number of points the driver has accumulated on those convictions (See Appendix E). Rule 6-206(a)(3) provides that a "person who has been suspended thrice within a 10 year period shall be revoked." The number of points assigned to a conviction depend on the type of offense involved, and certain of the less serious offenses, which do not directly relate to highway safety, neither count toward suspension nor have any points assigned to them.

The purpose of this statutory scheme is clear. A driver whose record indicates that his continued driving presents a threat to the safety of others, should have his license revoked or suspended, depending on the gravity of the threat involved. Because the driver is afforded the opportunity for a hearing on the merits of each violation on which his suspension is based, the defect inherent in the *Bell* v. *Burson* statute is not present here.

In *Bell*, this Court held that a prior hearing must precede a revocation or suspension of driving privileges where the state's interest was in protecting the public from a financially irresponsible driver. The crucial factor in *Bell* decision was that prior to the revocation of a license under Georgia's financial responsibility statute, the licensee was not accorded a hearing on the issue of fault or liability for the accident which resulted in the revocation. The Court stated, 402 U.S. at 542, 29 L. Ed. 2d at 96:

> We hold, then, that under Georgia's present statutory scheme, before the State may deprive petitoner of his driver's license and vehicle registration it must provide a forum for the determination of the question whether there is a reasonable possibility of a judgment being rendered against him as a result of the accident.

The practice of the Secretary of the State of Illinois conforms to the dictates of *Bell* v. *Burson*. Each time a licensee is convicted of a violation which counts toward his suspension and which results in an assignment of points, the dicensee is accorded a full opportunity to be heard on the issue of fault. It is only when the driver has been so convicted that the Secretary of State is authorized to revoke or suspend.

The hearings that a driver is afforded on his violations are clearly more than adequate to support a revocation or suspension. As this Court noted in *Bell*, 402 U.S. 540, 29 L. Ed. 2d 95:

> Clearly, however, the inquiry into fault or liability requisite to afford the licensee due process need not take the form of a full adjudication of the question of liability. . . . [W]e hold that procedural due process will be satisfied by an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amount claimed being rendered against the licensee.

Judged by the requirements of *Bell*, the Illinois procedure clearly affords a driver an adequate opportunity to be heard on the issues which underlie his suspension or revocation. The district court's reliance on *Bell* is misplaced.

The district court's suggestion that a driver's suspension or revocation depends on the determination of an issue independent of the fault issue involved in his convictions is at direct odds with the Illinois law cited to that court. The district court states that a suspension or revocation depends not only on the convictions, but also on whether those convictions indicate "lack of ability to use due care or disrespect for the traffic laws and safety of others," and that neither the statute nor the regulation sanctions the disregard of a determination of this issue (Appendix A, pp. A5-6). The court ignores the fact that Rule 206(a) forbids the Secretary to "look behind the conviction" (See Appendix E). Mitigating circumstances behind each conviction are, thus irrelevant.

The only other determination relevant to whether the convictions indicate lack of ability or disrespect concerns whether the type of offense which underlies the convictions indicates such lack of ability or disrespect. This determination, however, is contained within the statute and rules, since certain types of violations count toward suspension while others do not, and each type of violation is assigned a certain number of points depending on its severity. The Secretary is not authorized by Rule 6-206(a)(2) to disregard convictions or accumulated points.

The statute and rules do not require consideration of any factors other than the number of convictions and accumulation of points, since embodied within the Illinois statutory scheme is a decision that the repeated violation of traffic laws indicates either "a lack of ability to exercise ordinary

and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and safety of other persons upon the highway." The Secretary simply does not have the discretion of which the court speaks, except, of course, in promulgating rules and regulations, and this type of discretion does not operate in an individual case. As the district court itself, notes, "the accumulation of points is the only fact which is considered [by the Secretary] in determining whether to suspend or revoke" (Appendix A, p. A6).

The only interest which a prerevocation hearing would serve, is a review of the driver's records to determine whether a mistake has been made in the ministerial task of recording convictions and points. The likelihood of error in this regard is small, and is clearly outweighed by the State's interest in removing unsafe drivers from the road.

Furthermore, after notice of revocation, the licensee is not left without a remedy. There is a hiatus of several days between notification and the effective date of the revocation (here from June 2 to June 6). During this time, the licensee can request a check of his driving record for ministerial mistakes. In almost all cases of this sort, a hearing prior to revocation would serve no valid purpose other than putting the State through the added burden of providing a hearing which would disclose that the assignment of points to the licensee's driving record has been properly made.

The Supreme Court of Nebraska upheld a statutory scheme very similar to the one involved here in *Stauffer* v. *Weedlun,* 188 Neb. 105, 195 N.W. 2d 218 (1972). In so holding, the court stated, 195 N.W. 2d at 223:

> We think that in a very real sense the essential facts have been determined in the judicial proceedings in connection with each conviction. In a very real sense the Director acts only ministerially. The result — the revocation — flows from the operation of the statute upon the already judicially determined facts, that is, the series of convictions of traffic offenses. Of these the motorist already has knowledge. Of their effect point-wise he is charged by law with knowledge just as with any other case of knowledge of the law. These circumstances do, in our opinion, make the procedures applicable to revocation of a driver's license for an accumulation of points for traffic offense conviction clearly distinguishable from revocation under the financial responsibility law as in Bell v. Burson, *supra.*

The court continued, 195 N.W. 2d at 224:

> Under the Nebraska scheme the Director acts ministerially. The likelihood of error is small. The compelling public interest in removing from the highways those drivers whose records demonstrate unsafe driving habits outweighs the need for notice and hearing prior to the order to protect the individual against mistake. In this connection the matter must be viewed not as an isolated case but in the collective aspect, that is, the removal of many such drivers from the highways.

Finally, assuming arguendo, that there are issues involved in a revocation or suspension which indicate the need for a hearing, there are factors involved here which obviate the need for a hearing prior to revocation. In *Goss* v. *Lopez,* 419 U.S. 565, 42 L. Ed. 2d 725 (1975), this Court stated that there are recurring situations in which prior notice and hearing cannot be insisted upon. Such a situation was recognized to exist in an expulsion case if the presence of certain students posed a continuing danger to persons or property. Revoking the license of an incompetent driver who endangers the lives of the public is a similar situation.

Although the Court in *Bell* v. *Burson, supra,* did not believe that failure to comply with a financial responsibility statute was such an emergency situation, it did state that emergency situations were a noted exception to the due process requirement of prior hearing. The interest of the state in preventing injury to the public must be considered to create a more emergent situation than an interest of the state in insuring that once an injury does occur, it will be sufficiently recompensed.

Several states have upheld a driver's license revocation based on repeated convictions in that a record of frequent driving violations constitutes an emergency situation under the *Bell* decision. *State* v. *Skinner,* 207 N.W. 2d 495 (N.D. 1973); *Broughton* v. *Warren,* 281 A. 2d 625 (1971). The court in *Broughton* stated:

> The suspension of a driver's license under the kind of statute and proceeding here involved is not to punish the driver, but to protect the public from those who have demonstrated that their driving presents a hazard to life and property.

In the instant case, the district court found that the emergency exception was inapplicable because of the delay between the plaintiff's violation and the notice of revocation. The court, however, failed to take into account that before a revocation could take place, the plaintiff was entitled to a hearing on the issue of fault. Only after conviction could points be assigned to defendant's driving record. Although a delay of this sort may not further the state's interest in securing its highways, it does comply with the minimum requirements of *Bell* v. *Burson.*

CONCLUSION

For the foregoing reasons, appellants believe that the questions presented by this appeal are substantial and of broad importance and application. Many states have a statutory scheme similar to the one involved here. *See* 60 A.L.R. 3d 361. Appellants, therefore, respectfully urge this Honorable Court to give this case its full consideration and reverse the district court's judgment.

Respectfully submitted,

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
160 North LaSalle Street - Suite 900,
Chicago, Illinois 60601 (793-3500),
Attorney for Appellant.

PAUL J. BARGIEL,*
STEPHEN R. SWOFFORD,
Assistant Attorneys General,
160 North LaSalle Street - Suite 800,
Chicago, Illinois 60601, 312-793-5635,
Of Counsel.

---

*Mr. Bargiel and Mr. Swofford were assisted in the research and preparation of this Statement by Mary Stafford, a senior law student at the John Marshall Law School, Chicago, Illinois.

APPENDICES

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated, *Plaintiff*, v. MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity, *Defendant.*	No. 75 C 1821

Before TONE, Circuit Judge, and McLAREN and McGARR, District Judges.

MEMORANDUM OPINION AND ORDER

McGARR, District Judge. The plaintiff in this suit raises a substantial issue as to the constitutionality of Ill. Rev. Stat. Ch. 95½, § 6-206(a)(3), and seeks to enjoin the enforcement thereof. Accordingly, a three-judge court has been convened pursuant to 28 U.S.C. §§ 2281 and 2284. The following is the opinion of that court.

The plaintiff, Dennis M. Love, seeks to enjoin the defendant, Michael J. Howlett, from revoking the driver's license of the plaintiff and others similarly situated, with-

out a hearing prior to revocation. This practice is alleged to be in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. Plaintiff additionally states a claim under 42 U.S.C. § 1983. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1343, 1331, 2201 and 2202.

The defendant has filed a motion to dismiss supported by material extraneous to the pleadings. This motion will be taken as a motion for summary judgment under Rule 12(b), Fed. R. Civ. P. The plaintiff has filed a cross motion for summary judgment. The parties have briefed the issues and their motions will be considered simultaneously.

The facts in this particular action are as follows. The plaintiff, a truck driver, was issued citations for violations of traffic laws on three occasions pertinent to this suit. Prior to these citations, his license had been suspended for a time on March 17, 1970, and on October 22, 1969. He was convicted on the first citation on September 6, 1974. He was convicted on the second on November 21, 1974. On March 27, 1975, plaintiff was notified by letter that a further conviction would result in loss of his driving privileges. The third citation had been issued to the plaintiff on February 12, 1975, and his subsequent conviction occurred on March 31, 1975.

On June 3, 1975, plaintiff received a notice from the office of the Secretary of State that his license to operate a motor vehicle had been revoked effective June 6, 1975. The revocation was effected pursuant to the statute in issue here, Ill. Rev. Stat. Ch. 95½, § 6-206(a)(3). The reason for revocation stated on the notice was plaintiff's "having been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates disrespect for the traffic laws."

On June 6, 1975, upon application by the plaintiff, this court issued a temporary restraining order against the Secretary of State pending a resolution of the issues presented in the complaint filed June 5, 1975. The order was conditioned on plaintiff's application for a hardship driver's license. Plaintiff applied for such license on June 10, 1975, and was issued such a license on July 25, 1975.

Plaintiff's attack on the constitutionality of the statute has three aspects. The main thrust of the attack is directed to the failure of the statute to provide adequate notice and hearing to affected parties prior to suspension or revocation of their driver's licenses. Additionally, plaintiff challenges the statute as unconstitutionally vague in that it fails to establish adequate guidelines to be followed by the Secretary of State in suspension or revocation of licenses pursuant to its provisions. Lastly, the statute allegedly fails to inform the plaintiff of standards used by the Secretary of State for the suspension and revocation of drivers' licenses.

Illinois Revised Statutes Ch. 95½, § 6-206(a)(3) provides:

> "(a) The Secretary of State is authorized to suspend or revoke the license or permit of any person without preliminary hearing upon a showing by his records or other sufficient evidence that such person:
>
> • • •
>
> 3. Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway. . . ."

It is patent that the statute authorizes the suspension or revocation of a driver's license without any preliminary hearing.

The Supreme Court has stated unequivocally that driver's licenses, once issued, "are not to be taken away without that procedural due process required by the Fourteenth Amendment." *Bell* v. *Burson,* 402 U.S. 535, 539 (1971), citing *Sniadach* v. *Family Finance Corp.,* 395 U.S. 337 (1969), and *Goldberg* v. *Kelly,* 397 U.S. 254 (1970). The question remains as to what procedural due process is required in the instant case.

The defendant contends that this case is distinguishable from *Bell* v. *Burson, supra.* In *Bell* v. *Burson,* the State of Georgia suspended the driver's license of an uninsured motorist who was involved in an accident because of his failure to meet the State's financial responsibility requirement. No hearing was accorded the petitioner on the issue of whether or not he was liable for any damages as a result of the accident. The State's interest in protecting a claimant from the possibility of an unrecoverable judgment was held to be insufficient to justify depriving its citizens their right to due process, in that case defined as the right to a hearing on the issue of fault.

In the instant suit, it is argued, there is no determination of fault made prior to hearing. The only factors entering into the Secretary's decision are the number of convictions on a driver's record, each conviction obtained after opportunity was afforded plaintiff to contest same. This argument is based on the regulations promulgated by the Secretary, which provide that:

> "A person repeatedly involved in collisions or convictions to a degree which indicates the lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle, or whose record indicates disrespect for traffic laws and the safety of other persons on the highway, and who has accumulated sufficient points to warrant a second suspension within a 5-year period, may either be suspended or revoked by the Secretary of State, based on the number of points[1] in his record. A person who has been suspended thrice in a ten-year period shall be revoked."

Defendant maintains that the action of the Secretary is automatic under these guidelines and that a hearing is unnecessary to determine fault. The only purpose to be served by a hearing would be the authentication of the record or of the identity of the driver.

Assuming, as defendant suggests, that the plaintiff had adequate time to contest the authenticity of his record, he has still been denied procedural due process. The statute allows the Secretary a great deal of discretion in taking the action he deems necessary to protect the public from unsafe drivers. Furthermore, neither the statute nor the regulation provides that suspension or revocation of a license follows automatically from conviction of a given number of traffic offenses of certain types. The statute makes suspension or revocation dependent on a determination of whether the driver's repeated involvement in collisions or conviction of offenses indicates lack of ability to use due care or disrespect for the traffic laws and the safety of others. The regulation makes suspension or revocation dependent *both* on such a determination *and* the accumulation of a given number of points, and even then the Secretary "may" but is not required to suspend or

---

1. A system of assigning points to various violations has been prescribed by the Secretary in the regulations.

revoke the driver's license. Only when a driver has been suspended thrice in a ten-year period is the Secretary's action made mandatory.[2] Apparently in practice the accumulation of points is the only fact which is considered in determining whether to suspend or revoke, but neither the statute nor the regulation sanctions the disregard of the conditions of lack of ability to use due care or disrespect for traffic laws and the safety of others. So long, at least, as Illinois law makes a determination of the existence of such lack of ability or disregard a condition to revocation or suspension, a licensee must be given a hearing on those issues before his license can be suspended or revoked.

The defendant argues further that *Bell* v. *Burson* is distinguishable in that the governmental interest protected by the statute in issue in that case was inferior to that in the instant case. In the instant case, the state's interest is "the protection of the public health and safety on its highways." We agree with our brothers in the Western District of Pennsylvania that this "legislation is an intelligent and commendable effort to diminish the carnage on our highways by focusing attention on the most common cause of accidents, the careless and code-violating driver." *Reese* v. *Kassab,* 334 F. Supp. 744 (1971). How-

---

2. In the instant case, had plaintiff's license been suspended instead of revoked, he would have then been subject to the mandatory revocation provision. Since a suspension requires the same due process safeguards as does a revocation, the defendant's elimination of a step in the revocation process is immaterial to the ultimate determination of the issues in this case.

ever, we also agree with their ultimate conclusion that in pursuing this interest the state must also accommodate the individual's right to procedural due process."

Finally, we disagree with the defendant's argument that this is an "emergency situation" specifically excepted from the holding in *Bell* v. *Burson.* As an indication that this is not such an emergency situation, we point out that in at least one situation where suspension or revocation is allowed, the state furnishes a hearing before taking such action. Ill. Rev. Stat. Ch. 95½ § 6-206(a)(17). Furthermore, under Ill. Rev. Stat. Ch. 95½ § 6-205, which mandates revocation for certain offenses, such as manslaughter or driving while intoxicated, the revocation is effected only after conviction of the underlying offense.[3] A fault determination being the only distinguishing characteristic of § 6-205, it follows that, in view of the state's regulatory scheme, no emergency situation exists in this case.

In further contravention of the defendant's argument that an "emergency situation" exists is the length of time involved in the instant case between plaintiff's final conviction and his ultimate revocation. Even taking the defendant's position that the conviction was not finalized until 30 days had transpired, a period of almost a month elapsed before plaintiff was sent his notice of revocation. This period of time, while not extreme, affords ample opportunity for a hearing.

We therefore conclude that the practice of the Secretary of State whereby operator's licenses are suspended or revoked under Chapter 95½ § 6-206(a)(3) of the Illinois

---

3. The counterargument of defendant that a hearing on the issue of fault is necessary before mandatory revo-

Revised Statutes is unconstitutional by virtue of its failure to provide the affected party notice and adequate opportunity to be heard.

In view of our holding on the issue of procedural due process, we need not reach the issue of the substantive unconstitutionality of the Act in question.

Accordingly, plaintiff's motion for summary judgment is granted as to Count I of the complaint. Count II is rendered moot by this decision.

ENTER:

/s/ PHILIP W. TONE
Philip W. Tone, Judge
United States Court of Appeals

/s/ RICHARD W. McLAREN
Richard W. McLaren, Judge
United States District Court

/s/ FRANK J. McGARR
Frank J. McGarr, Judge
United States District Court

DATED: January 20, 1976

---

cation under § 6-205, whereas no fault determination need be made under § 6-206(a)(3), has been discussed previously.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated, *Plaintiff,* v. MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity, *Defendant.*	No. 75 C 1821

ORDER

This cause coming on to be heard on the motion of the defendant Michael J. Howlett, Secretary of State of Illinois, taken as a motion for summary judgment and the cross motion of the plaintiff for summary judgment, and the Court having considered the plaintiff's complaint and all motions and memoranda filed by the parties, and the Court having made and filed its findings of fact and its conclusion of law that 95½ § 6-206(a)(3) of the Illinois Re-

vised Statutes is unconstitutional, all as set forth in the Court's Memorandum Opinion of January 20, 1976,

IT IS ORDERED, that the defendant Secretary of State, his agents, servants, employees, attorneys, and all persons in active concert and participation with them be and are hereby restrained and enjoined from enforcing Chapter 95½ § 6-206(a)(3) of the Illinois Revised Statutes.

ENTER:

/s/ PHILIP W. TONE

Philip W. Tone, Judge,

United States Court of Appeals

/s/ FRANK J. McGARR

Frank J. McGarr, Judge,
United States District Court

DATED: April 13, 1976,

Nunc pro tunc, as of January 20, 1976

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated, *Plaintiff,* v. MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity, *Defendant.*	No. 75 C 1821

NOTICE OF APPEAL TO THE SUPREME
COURT OF THE UNITED STATES

PLEASE TAKE NOTICE that the defendant, MICHAEL J. HOWLETT, by his attorney, WILLIAM J. SCOTT, Attorney General for the State of Illinois, hereby appeals to the United States Supreme Court from the final judgment entered in this cause on January 20, 1976.

This appeal is taken pursuant to the 28 U.S.C. 1253.

WILLIAM J. SCOTT,

Attorney General,
State of Illinois,

Attorney for Defendant- Appellant.

By: PAUL J. BARGIEL,
Assistant Attorney General,
160 N. LaSalle St., Suite 800,
Chicago, Illinois 60601 (793-5635).

RECEIVED: Feb. 18, 1976

H. Stuart Cunningham, Clerk

United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity,

Defendant.

No. 75 C 1821

NOTICE OF FILING AND PROOF OF SERVICE
OF NOTICE OF APPEAL

TO: Alan M. Freedman, Allen L. Ray & Richard J. Hess
Attorneys for Plaintiff
Mid-South Law Office
4655 South Michigan
Chicago, Illinois 60653 (538-0733)

PLEASE TAKE NOTICE that the undersigned has this 18th day of February, 1976, filed with the Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, the attached Notice of Appeal to the Supreme Court of the United States.

WILLIAM J. SCOTT,
Attorney General,
State of Illinois.

By: PAUL J. BARGIEL,
Assistant Attorney General,
160 N. LaSalle St., Suite 800,
Chicago, Illinois 60601 (793-5635).

STATE OF ILLINOIS
COUNTY OF COOK SS.

MAUREEN McMAHON, being first duly sworn, states that she served a copy of the above notice of filing and proof of service of notice of appeal and attached notice of appeal on the attorneys of record at the address listed above, by mailing copies of same, first-class mail, postage paid, this 18th day of February, 1976.

MAUREEN McMAHON.

SUBSCRIBED AND SWORN to before me this
18th day of February, 1976.

MARY GRIFFIN,
Notary Public.

APPENDIX D

Illinois Revised Statutes 1975, Chapter 95½, Section 6-206, in relevant part provides:

§6-206. Discretionary authority to suspend or revoke license or permit — Right to a hearing.

(a) The Secretary of State is authorized to suspend or revoke the license or permit of any person without preliminary hearing upon a showing by his records or other sufficient evidence that such person:

1. Has committed an offense for which mandatory revocation of license or permit is required upon conviction;

2. Has been convicted of not less than 3 offenses against traffic regulations governing the movement of vehicles with the exception of those offenses excluded under the provisions of Section 6-204(2), committed within any 12 month period so as to indicate the disrespect for traffic laws and a disregard for the safety of other persons on the highways; conviction upon 3 charges of violation of Section 11-601 of this Act committed within a period of 12 months shall be deemed grounds for the revocation or suspension of a license or permit under this Section, provided that no such revocation or suspension shall be entered more than 6 months subsequent to the date of conviction of the 3rd offense;

3. Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway;

APPENDIX E

Rule 6-206 of the Rules and Regulations under the Illinois Vehicle Code, in relevant part provides:

RULE 6-206(a) — Discretionary authority to suspend or revoke a license or permit.

The Secretary of State is authorized to exercise discretionary authority to suspend or revoke driving privileges and the evidence thereof without a preliminary hearing, or to decline to suspend or revoke such driving privileges. In making a determination of the action to be taken, the Secretary of State shall take into consideration the severity of the offense and conviction, the number of offenses and convictions, and prior suspensions or revocations on the abstract of the driver's record. The Secretary may also take into consideration the points accumulated by the driver and noted on his driving record.

For the purpose of this Rule and its companion rules, a conviction is the final adjudication of "guilty" by a court of competent jurisdiction, either after a bench trial, trial by jury, plea of guilty, order of forfeiture, or default, as reported to the Secretary of State, and the Secretary of State is not authorized to look behind the conviction.

The provisions of this Rule and its companion rules are subject to the provisions of the Drivers License Compact.

Upon the suspension or revocation of a license, the affected driver may make a written request to the Secretary of State for an administrative hearing pursuant to Section 2-118 of the CODE, and any final order resulting therefrom shall be subject to judicial review.

The procedures to be followed shall be identical for those provided under Rule 7-101 [Administration of Hearings] and shall assure the affected driver of his Constitutional rights to due process of law and equal protection under the law.

Attached hereto, made a part hereof, is the following:

Point system promulgated by the Secretary of State to Rule 6-204 [not reproduced].

RULE 6-206(a)1 — Offenses where mandatory revocation is possible.

When a driver has committed an offense for which mandatory revocation of license or permit is required upon conviction, the Secretary may either suspend or revoke said license or permit.

RULE 6-206(a)2 — 3 traffic offenses within 12 months.

A person who has been convicted of three (3) or more offenses against traffic regulations, governing the movement of vehicles, with the exception of those offenses excluded under provisions of Section 6-204(2) and whose violations have occurred within a twelve (12) month period may be suspended as follows:

Number of Points	*Action*
20 to 44	Suspension up to 2 months
45 to 74	Suspension up to 3 months
75 to 89	Suspension up to 6 months
90 to 99	Suspension up to 9 months
100 to 109	Suspension up to 12 months
Over 110	Revocation for not less than 12 months.

RULE 6-206(a)3 — Repeated convictions or collisions.

A person repeatedly involved in collisions or convictions to a degree which indicates the lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle, or whose record indicates disrespect for traffic laws and the safety of other persons on the highway, and who has accumulated sufficient points to warrant a second suspension within a 5 year period, may either be suspended or revoked by the Secretary of State, based upon the number of points in his record. A person who has been suspended thrice within a 10 year period shall be revoked.

Supreme Court, U. S.
FILED
DEC 3 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1513

MICHAEL J. HOWLETT, SECRETARY OF STATE OF ILLINOIS,

Appellant,

vs.

DENNIS N. LOVE,

Appellee.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

Printed by Authority of the State of Illinois—12-1-76—80

APPEAL DOCKETED APRIL 19, 1976
PROBABLE JURISDICTION NOTED OCTOBER 4, 1976

INDEX

PAGE

Chronological List of Relevant Docket Entries 1

Complaint, filed June 5, 1975 3

Affidavit of Plaintiff in Support of Motion for a Temporary Restraining Order, filed June 6, 1975 7

Exhibit to Defendant's Motion to Dismiss, filed July 14, 1975: Complete file relative to driving privileges of Dennis N. Love (The Summary of arrests, accidents, suspensions and other actions is the only document from the file printed herein) 8

Exhibits to Plaintiff's Motion for Summary Judgment, filed August 8, 1975 12

Exhibit C: Notice of Revocation of Plaintiff's Driver's License 13

Exhibit D: Affidavit with Respect to Hearings Held by the Office of the Secretary of State 15

Memorandum Opinion and Order, entered January 20, 1976 16

Supplementary Injunction Order of April 13, 1976, entered nunc pro tunc as of January 20, 1976 23

Order of the Supreme Court of the United States noting probable jurisdiction, entered October 4, 1976 25

In The

Supreme Court of the United States

October Term, 1975

No. 75-1513

MICHAEL J. HOWLETT, SECRETARY OF STATE OF ILLINOIS,

Appellant,

vs.

DENNIS N. LOVE,

Appellee.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

---

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

6-5-75 — Filed complaint and copies.

6-6-75 — Filed plaintiff's notice of motion; Motion for temporary restraining order; Affidavit of Dennis N. Love in support of motion for temporary restraining order; Filed memorandum in support of plaintiff's motion for temporary restraining order.

6-6-75 — Filed plaintiff's notice of motion; Plaintiff's motion to convene three Judge Court.

6-9-75 — Enter order dated 6-6-75; Motion for temporary restraining order is heard and granted until further order of Court. Temporary restraining order is conditioned that plaintiff apply for hardship license, limited as to business purposes only and have liability insurance coverage. Motion to convene a three judge court is granted. McGarr, J.

6-10-75 — Filed order designating three-judge Court pursuant to Title 28 USC § 2284 of Hon. Philip W. Tone, Hon.. Richard W. McLaren and Hon. Frank J. McGarr.—Thomas E. Fairchild, Chief Judge of 7th Circuit.

6-12-75 — Filed plaintiff's motion for preliminary injunction; Filed Memorandum in support of the maintenance of the temporary restraining order or alternatively a memorandum in support of the motion for preliminary injunction.

6-13-75 — Enter order dated 6-12-75; Enter order extending temporary restraining order to July 2, 1975. McGarr, J.

7-14-75 — Filed defendant's notice of filing Memorandum in support of defendant's motion to dismiss and two copies; Filed defendant's notice of filing; Motion to dismiss and two copies.

8-8-75 — Filed plaintiff Love's motion for summary judgment and two copies; Filed plaintiff's memorandum in support of plaintiff's motion for summary judgment and in opposition to the defendant's motion to dismiss.

9-22-75 — Filed reply memorandum in support of defendant Howlett's motion to dismiss and in opposition to plaintiff's motion for summary judgment.

10-2-75 — Filed plaintiff's reply to defendant's brief in opposition to plaintiff's motion for summary judgment and 2 copies.

10-23-75 — Filed Plaintiffs' Motion for class action certification; Filed Plaintiffs' Memorandum for class action certification and determination pursuant to Rule 23 of the F.R.C.P.

1-21-75 — Enter order dated January 20, 1976:
Pursuant to Memorandum Opinion and order entered this day, Plaintiff's motion for Summary Judgment is granted as to Count I of the Complaint. Count II is rendered moot by this decision—Draft—Tone, J., McLaren, J. and McGarr, J.

2-18-76 — Filed Defendant's notice of Appeal to the Supreme Court of the United States, with Notice of filing and Proof of Service of Notice of Appeal.

4-14-76 — Enter order dated April 13, 1976.
Enter preliminary injunction nunc pro tunc as of January 20, 1976. Draft—McGarr, Tone, J. USCA.

10-12-76 — Filed certified copy of the order of the Supreme Court of the United States noting probable jurisdiction in this case.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Filed June 5, 1975

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity,

Defendant.

No. 75C 1821

COMPLAINT

1. This is an action for injunctive relief wherein the plaintiff Dennis N. Love seeks to enjoin the defendant Michael J. Howlett from revoking the driver's license of the plaintiff and others similarly situated without a hearing prior to revocation. This is also an action to declare the prescribed practice to be in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

2. Jurisdiction is conferred upon the court by Title 28 Section 1343 of the United States Code, providing for jurisdiction over claims arising under Title 42, Section 1983 and the Fourteenth Amendment to the United States Constitution. Jurisdiction is also conferred upon this Court under Title 28, Sections 1331, 2201 and 2202

of the United States Code. This controversy exceeds the amount of $10,000 exclusive of interest and costs. An application is hereby made for the convening of a three-judge federal district court to hear and determine this matter pursuant to 28 U.S.C. 2281 and 2284.

3. The plaintiff Dennis N. Love is a resident of Chicago, Illinois, presently employed as a truck driver, whose license to operate a motor vehicle has been revoked effective June 6, 1975 pursuant to the Illinois Motor Vehicle Code, (hereinafter *Code*) Chapter 95½, Illinois Revised Statutes, Section 6-206(a)(3), a copy of which is attached hereto as exhibit A.

4. The defendant Michael J. Howlett is the Secretary of State of the State of Illinois and is authorized, pursuant to Chapter two of the *Code*, to issue, suspend and revoke operator licenses in the State of Illinois.

5. The defendant Howlett derives his authority to suspend or revoke an operator's license without a preliminary hearing pursuant to 95½ I.R.S. 6-206(a).

6. Dennis N. Love brings this action on his own behalf and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all persons licensed to operate motor vehicles by the State of Illinois and whose licenses are subject to revocation pursuant to 95½ I.R.S. 6-206(a)(3). The class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims and defenses of the named plaintiff are typical of the claims and defenses of the class; the named plaintiffs will fairly and adequately protect the interests of the class; the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the defendants; defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; and questions of law and

fact common to class members predominate over questions affecting individual members, and a class action is superior to other available methods for the fair and efficient methods of adjudication.

7. On or about June 3, 1975, the plaintiff received, without prior expectation or notice, a statement from the Office of the Secretary of State, pursuant to 95½ I.R.S. 6-209, that his license to operate a motor vehicle had been revoked effective June 6, 1975, a copy of the said statement being attached hereto as exhibit B. The said notice was postmarked June 2, 1975.

8. 95½ I.R.S. 6-206(a)(3) violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution in that it denied the plaintiff and others similarly situated a hearing prior to the revocation action of the defendant.

9. The plaintiffs have no adequate remedy at law.

WHEREFORE the plaintiff on his own behalf and on behalf of all persons similarly situated, prays as follows:

1. That a three-judge court be convened pursuant to 28 U.S.C. 2281, 2284.

2. That the Court enter a declaratory judgment declaring 95½ I.R.S. 6-206(a)(3) to be violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

3. That the Court enter an injunction to enjoin the enforcement of 95½ I.R.S. 6-206(a)(3) by the defendant Secretary of State, his agents and his successors in office.

4. That the Court award appropriate damages.

5. That the Court enter such appropriate relief as may be fit and proper.

COUNT II

1. This is an action for injunctive relief wherein the plaintiff Dennis N. Love seeks to enjoin the defendant Michael J. Howlett from revoking the driver's license of the plaintiff and others similarly situated pursuant to 95½ I.R.S. 6-206(a)(3), the said statute being vague and failing generally to give to the plaintiff and others similarly situated adequate notice of the standards used by the defendant Secretary of State when making the determination to suspend or revoke, all in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

2-7. Plaintiff realleges paragraphs two through seven of Count I of the Complaint as paragraphs two through seven of Count II of the Complaint.

8. The plaintiff has no adequate remedy at law.

WHEREFORE the plaintiff prays as follows:

1. That a three-judge court be convened pursuant to 28 U.S.C. 2281, 2284.

2. That the Court enter a declaratory judgment declaring 95½ I.R.S. 6-206(a)(3) to be violative of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

3. That the Court enter an injunction enjoining the defendant Secretary of State, his agents and his successors in office from suspending or revoking operator licenses pursuant to 95½ I.R.S. 6-206(a)(3).

4. That the Court award appropriate damages.

5. That the Court enter such appropriate relief as may be fit and proper.

/s/ Alan M. Freedman
/s/ Richard J. Hess
/s/ Allen L. Ray

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Filed June 6, 1975
[caption omitted in printing]

AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

Dennis N. Love, being first duly sworn, does depose and state as follows:

1. I am the plaintiff in the above captioned case. I have knowledge of the facts contained herein and could testify competently thereto if called as a witness.

2. I reside at 740 East 68th Street, Chicago, Illinois with my wife Kathy Love and one child, Eric Love.

3. My wife is presently pregnant.

4. I am 25 years of age and have been licensed to operate a motor vehilce since 1968.

5. My first and only employment upon being discharged from the United States Army has been with the Thompson-Starr Route Company as a truck driver.

6. My education ended after the second year of high school and I have no training in any other type of employment which would enable me to support my family.

7. If my driver's license is revoked, I will be unable to continue my employment as a truck driver.

8. The loss of my driver's license will cause great hardship and will threaten me with immediate and future loss of a livelihood.

/s/ Dennis N. Love

[Jurat omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION

Filed July 14, 1975

EXHIBIT TO DEFENDANT'S MOTION TO DISMISS

Certificate Nº DL- 7123

STATE OF ILLINOIS
OFFICE OF
THE SECRETARY OF STATE

To all to whom these Presents Shall Come, Greeting:

I, MICHAEL J. HOWLETT, Secretary of State of the State of Illinois, do hereby certify that the following, and hereto attached, is a true photostatic copy of complete file from the files in the Drivers License Division relative to the driving privileges of Dennis N. Love, 5322 South State, Apt. 208, Chicago, Illinois, File No: L100-1744-9207. I FURTHER CERTIFY the records show the said, Dennis N. Love, does have a valid Temporary Restricted Driving Permit as of this date persuant to the Federal Court Order per Judge Mc Garr.

the original of which is now on file and a matter of record in this office

In Testimony Wherrof, I hereto set my hand, and cause to be affixed the Great Seal of the State of Illinois

Done at the City of Springfield this 25th day of June AD 19 75.

Michael J Howlett
SECRETARY OF STATE

L300-1744-9207 03600
07-21-49 M 06-28-75 75-06-24

THE FOLLOWING INFORMATION IS FURNISHED FROM THE DRIVERS LICENSE FILE OF THE PERSON IDENTIFIED ABOVE, PURSUANT TO THE PROVISIONS OF THE ILLINOIS VEHICLE CODE.

DENNIS N LOVE
5322 S STATE APT 208
CHICAGO

L300-1744-9207

DI	BIRTH DATE
	07 21 49

SEX	HEIGHT	WEIGHT	HAIR	EYES
M	6 01	185	BLK	BRN

TYPE	ISSUE DATE	CLASS	RESTRICTION	EXPIRATION DATE
1	06 26 74	D *	0-0-0	07 21 77

Valid Temporary Restricted Driving Permit

TYPE OF ACTION	DATE OF ARREST	DATE OF ACTION	DESCRIPTION OF ACTION	ACCIDENT OR DOCKET NO	TERMINATION DATE OF SUSPENSION	STOP IN EFFECT
96	04 21 68	05 21 68	1 103 00	935489		
99	09 15 68	10 17 68	7 202 00	5831989		
99	08 20 68	10 10 68	7 218 00	5824431		
99	08 14 69	08 27 69	1 049 01	6871409		
03		11 04 69	6 206 A2		01 04 70	NO
73		01 04 70	6 206 A2			
94	11 12 69	01 29 70	6 210 01	6756794		
03		03 17 70	6 303 B0		05 17 70	NO
73		05 17 70	6 303 B0		05 17 70	
14		04 05 74		118019		
99	08 24 74	11 21 74	1 0601 03	45925		
99	08 16 74	09 06 74	8 0601 07	265516		
60		03 27 75				
99	02 12 75	03 31 75	1 0601 03	2741482		
02		06 06 75	6 206 A3			YES
47		06 06 75				
10		06 17 75		35		

This is to certify that as the records of the Secretary of State a careful search of my records, the information set out hereto is a true and accurate copy of the captioned individual's driving record, identified by drivers license number, and it covers all such matters reported as a result of any driver control action taken.

Michael J. Howlett

Secretary of State

(SEE REVERSE FOR EXPLANATION OF CODES AND COLUMN HEADINGS)

EXPLANATION OF CODES AND COLUMN HEADINGS

Although most of the column headings appearing at the top of the abstract are self-explanatory, two need clarification.

D.E.: "Y" indicates driver education instruction reported to Secretary of State.

TYPE: This column indicates the type of license:

1. Drivers License
2. Duplicate Drivers License
3. Corrected Drivers License
4. Instruction Permit
5. Duplicate Instruction Permit
6. Corrected Instruction Permit

TYPE ACTION . . . .

01 MANDATORY REVOCATION
02 DISCRETIONARY REVOCATION
03 DISCRETIONARY SUSPENSION
04 SAFETY RESPONSIBILITY SUSPENSION
05 FINANCIAL RESPONSIBILITY SUSPENSION
06 UNSATISFIED JUDGMENT SUSPENSION
07 REVOCATION 6-205 (B) OR 6A-205 (B)
08 CANCELLATION OF LICENSE
09 MANDATORY SUSPENSION
10 AMENDED ORDER ISSUED
12 CITED FOR EXAMINATION
13 SIGNED AFFIDAVIT FOR LOST OR STOLEN LICENSE, LIEU OF BAIL, ETC.
14 COLLISION INVOLVING PROPERTY DAMAGE
16 COLLISION INVOLVING FATAL INJURY
19 COLLISION INVOLVING PERSONAL INJURY
21 TERMINATION OF SAFETY RESPONSIBILITY SUSPENSION
22 "STOP" PLACED IN FILE
27 LICENSE SURRENDERED TO FOREIGN STATE AND RETURNED TO ILLINOIS
28 REPORT [illegible] ACCIDENT
32 DENIAL OF RESTRICTED DRIVING PERMIT
33 DENIAL OF LICENSE
34 EXTENSION OF REVOCATION
35 EXTENSION OF SUSPENSION
40 FORMAL HEARING
41 HEARING AND REVIEW
47 F.R. FUTURE PROOF REQUIRED
48 DRIVER TRAINING INSTRUCTOR OR SCHOOL BUS DRIVER
50 INFORMAL CONFERENCE HELD
52 SHOW CAUSE HEARING . . . RECOMMEND ACTION
53 SHOW CAUSE HEARING . . . RECOMMEND NO ACTION
55 6-111 OR 6A-111 CONFERENCE
60 WARNING LETTER ISSUED
71 PROBATIONARY PERMIT ISSUED
72 REINSTATEMENT AFTER EXTENDED REVOCATION
73 TERMINATION OF SUSPENSION
74 REINSTATEMENT AFTER REVOCATION
75 TERMINATION OF EXTENDED SUSPENSION
76 TERMINATION OF FINANCIAL RESPONSIBILITY SUSPENSION
77 TERMINATION OF UNSATISFIED JUDGMENT SUSPENSION
78 RESTRICTED DRIVING PERMIT ISSUED
84 F.R. FUTURE PROOF FILINGS COMPLETED
93 IMMEDIATE ACTION BOND FORFEITURE (NO POINTS ASSIGNED)
94 IMMEDIATE ACTION CONVICTION (NO POINTS ASSIGNED)
95 BOND FORFEITURE (NO POINTS ASSIGNED)
96 CONVICTION (NO POINTS ASSIGNED)
97 BOND FORFEITURE (POINTS ASSIGNED)
99 CONVICTION (POINTS ASSIGNED)

OTHER CODES . . .

DATE OF ARREST: The column with this heading refers to the date the traffic ticket was issued.

DATE OF ACTION. The column with this heading refers to the date the action was taken; e.g., the conviction date in the case of a traffic law violation, rather than the date of the offense. There is one exception. . . in the case of a discretionary suspension (Type Action 03), the date which the suspension becomes effective is indicated, instead of the date which the order was entered and filed.

DESCRIPTION OF ACTION:

DESCRIPTION OF OFFENSE: This column describes the type or nature of a traffic offense. The code which is used here is composed of the Chapter and Section number of the Illinois Vehicle Code, Uniform Act Regulating Traffic on Highways or the Municipal Code of the City of Chicago. For example, offense code 048.00 refers to Section 48 of the Uniform Act Regulating Traffic On Highways. . . "Reckless Driving". The parallel offense of the Illinois Vehicle Code will appear as 105-03.00

The single digit code which precedes the Section number refers to the identity of the law. . . 1. Illinois Vehicle Code or Uniform Act Regulating Traffic on Highways. . . 2. Local Ordinance (other than Chicago) . . . 3. Illinois Tollway Laws and Regulations . . . 4. Penal Code (felony). . . . 6. The Illinois Driver Licensing Law. . . 7. Chicago Municipal Ordinance . . . 8. Foreign State and Other.

STATUTORY AUTHORITY: The code used here refers to the chapter and section of the Illinois Vehicle Code or the Illinois Vehicle Law which provides the authority for the action taken; e.g., 6-205 A2 and 6A-205 A2 is a mandatory revocation of a license after conviction of operating a motor vehicle while under the influence of intoxicating liquor.

ACCIDENT OR DOCKET NUMBER: This column contains the docket number or arrest ticket number (often the same) of a specific traffic offense. It also contains the motor vehicle accident number which is assigned to each case by the Safety Responsibility Section of the Highway Division.

TERMINATION OF SUSPENSION: This column indicates the termination date of the discretionary suspension. In some cases the length of the suspension is indicated by the number of months, such as "6".

STOP IN EFFECT: This column indicates if a suspension or revocation is in effect.

REQ 89 DL EDPM 56 13 OCT 72

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION

Filed August 8, 1976

EXHIBITS TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

EXHIBIT C

STATE OF ILLINOIS **OFFICE OF THE SECRETARY OF STATE** SPRINGFIELD 02

NOTICE OF REVOCATION

Dennis N. Love
5322 South State, Apartment #208
Chicago 60609
L100-1744-9207

	Mo.	Day	Yr.
Date of Revocation	06	06	75
License Number	L100-1744-9207		
Date of Conviction	06-20-75		
Authority: Section *Illinois Vehicle Code*	6-206(a)3		

07-21-49

Pursuant to the provisions of Section 6-209 of the Illinois Vehicle Code, YOU ARE HEREBY NOTIFIED that an Order revoking your Illinois drivers license or permit, your privilege to operate a motor vehicle, and your privilege of obtaining a license within this State, has been entered on the date shown above.

This action has been taken as a result of: Your having been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates disrespect for the traffic laws.

YOUR LICENSE MUST BE SURRENDERED IMMEDIATELY—SEE REVERSE

William F. Logan, Administrator
Drivers License Division

[Notice of Revocation — reverse side]

IMPORTANT—READ CAREFULLY

1. All drivers licenses and permits must be immediately surrendered to the Secretary of State as required by Sections 6-209 and 6-301 of the Illinois Vehicle Code. Please use the enclosed return envelope. (Do not return this notice with your license. Keep for your records.)

2. The operation of motor vehicles by you after the effective date of this notice is *not permitted* and is a VIOLATION OF Section 6-210 of the Illinois Vehicle Code. Conviction of such operation is punishable by imprisonment for not more than one year and in addition a fine may be imposed not to exceed $1,000.

3. Any person whose license or permit has been revoked under the provisions of Section 6-206 of the Illinois Vehicle Code shall be afforded an opportunity for a hearing, upon written request to the Secretary of State. *If you live in Chicago or any part of Cook County*, write to the Secretary of State in care of the motor vehicle facility whose Chicago address is listed on the accompanying colored card.

4. A license which has been revoked cannot be renewed or restored. However, application for a new license may be made after the expiration of one year from the date of revocation, or upon removal of cause.

DL DC-R2.16
REQ. 249
AUG. '73

EXHIBIT D

AFFIDAVIT

I, Alan M. Freedman, attorney at law, on oath state that I represented the following persons at administrative hearings before a Hearings Officer of the Illinois Secretary of State, Drivers License Division. These hearings were held to review the propriety of the Secretary's revocation of each party's Illinois drivers license. In every case, a minimum of four months elapsed between the filing of a written request for a hearing and the rendering of a final administrative decision. In one instance, the appellant has been waiting more than nine months for a determination of her appeal.

Mr. William Smith
4362 S. Wentworth Ave.
Chicago, Illinois 60609
D.L. #: S 530-9202-0181
Hearing requested: 3-1-73
Hearing held: 3-21-73
Decision rendered: 7-6-73
Results: Revocation lifted

Mr. Lee Simmons
5952 S. Morgan St.
Chicago, Illinois 60621
D.L. #: S 552-5200-3345
Hearing requested: 3-13-75
Hearing held: 4-4-73
Decision rendered: 6-28-73
Results: Revocation lifted

Mr. Daniel A. Shelly
406 E. 109th St.
Chicago, Illinois 60628
D.L. #: S 400-1611-4284
Hearing requested: 7-13-73
Hearing held: 8-2-73
Decision rendered: 1-8-74
Results: Revocation lifted

Ms. Verlenia M. Harris
942 E. 76th St.
Chicago, Illinois 60619
D.L. #: H 620-8734-5760
Hearing requested: 10-14-74
Hearing held: 12-3-74
Decision rendered: none to date

/s/ Alan M. Freedman
Alan M. Freedman

[Jurat omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity,

Defendant.

No. 75 C 1821

Before TONE, *Circuit Judge*, and MCLAREN and MCGARR, *District Judges.*

MEMORANDUM OPINION AND ORDER

MCGARR, *District Judge.* The plaintiff in this suit raises a substantial issue as to the constitutionality of Ill. Rev. Stat. Ch. 95½ § 6-206(a)(3), and seeks to enjoin the enforcement thereof. Accordingly, a three-judge court has been convened pursuant to 28 U.S.C. §§ 2281 and 2284. The following is the opinion of that court.

The plaintiff, Dennis N. Love, seeks to enjoin the defendant, Michael J. Howlett, from revoking the driver's license of the plaintiff and others similarly situated, without a hearing prior to revocaton. This practice is alleged to be in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution

of the United States. Plaintiff additionally states a claim under 42 U.S.C. § 1983. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1343, 1331, 2201 and 2202.

The defendant has filed a motion to dismiss supported by material extraneous to the pleadings. This motion will be taken as a motion for summary judgement under Rule 12(b), Fed.R.Civ.P. The plaintiff has filed a cross motion for summary judgment. The parties have briefed the issues and their motions will be considered simultaneously.

The facts in this particular action are as follows. The plaintiff, a truck driver, was issued citations for violations of traffic laws on three occasions pertinent to this suit. Prior to these citations, his license had been suspended for a time on March 17, 1970, and on October 22, 1969. He was convicted on the first citation on September 6, 1974. He was convicted on the second on November 21, 9174. On March 27, 1975, plaintiff was notified by letter that a further conviction would result in loss of his driving privileges. The third citation had been issued to the plaintiff on February 12, 1975, and his subsequent conviction occurred on March 31, 1975.

On June 3, 1975, plaintiff received a notice from the office of the Secretary of State that his license to operate a motor vehicle had been revoked effective June 6, 1975. The revocation was effected pursuant to the statute in issue here, Ill.Rev.Stat. Ch. 95½ 6-206(a)(3). The reason for revocation stated on the notice was plaintiff's "having been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates disrespect for the traffic laws."

On June 6, 1975, upon application by the plaintiff, this court issued a temporary restraining order against the Secretary of State pending a resolution of the issues presented in the complaint filed June 5, 1975. The order was conditioned on plaintiff's application for a hardship driver's license. Plaintiff applied for such license on June 10, 1975, and was issued such a license on July 25, 1975.

Plaintiff's attack on the constitutionality of the statute has three aspects. The main thrust of the attack is directed to the failure of the statute to provide adequate notice and hearing to affected parties prior to suspension or revocation of their driver's licenses. Additionally, plaintiff challenges the statute as unconstitutionally vague in that it fails to establish adequate guidelines to be followed by the Secretary of State in suspension or revocation of licenses pursuant to its provisions. Lastly, the statute allegedly fails to inform the plaintiff of standards used by the Secretary of State for the suspension and revocation of driver's licenses.

Illinois Revised Statutes Ch. 95½ § 6-206(a)(3) provides:

> "(a) The Secretary of State is authorized to suspend or revoke the license or permit of any person without preliminary hearing upon a showing by his records or other sufficient evidence that such person:
>
> . . .
>
> 3. Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway. . . ."

It is patent that the statute authorizes the suspension or revocation of a driver's license without any preliminary hearing.

The Supreme Court has stated unequivocally that driver's licenses, once issued, "are not to be taken away without that procedural due process required by the Fourteenth Amendment." *Bell v. Burson*, 402 U.S. 535, 539 (1971), citing *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), and *Goldberg v. Kelly*, 397 U.S. 254 (1970). The question remains as to what procedural due process is required in the instant case.

The defendant contends that this case is distinguishable from *Bell v. Burson, supra.* In *Bell v. Burson*, the State of Georgia suspended the driver's license of an uninsured motorist who was involved in an accident because of his failure to meet the State's financial responsibility requiremet. No hearing was accorded the petitioner on the issue of whether or not he was liable for any damages as a result of the accident. The State's interest in protecting a claimant from the possibility of an unrecoverable judgment was held to be insufficient to justify depriving its citizens their right to due process, in that case defined as the right to a hearing on the issue of fault.

In the instant suit, it is argued, there is no determination of fault made prior to hearing. The only factors entering into the Secretary's decision are the number of convictions on a driver's record, each conviction obtained after opportunity was afforded plaintiff to contest same. This argument is based on the regulations promulgated by the Secretary, which provide that:

> "A person repeatedly involved in collisions or convictions to a degree which indicates the lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle, or whose record indicates disrespect for traffic laws and the safety of other persons on the highway, and who has accumulated sufficient points to warrant a second suspension within a 5-year period, may either be suspended or revoked by the Secretary of State, based on the number of points[1] in his record. A person who has been suspended thrice in a ten-year period shall be revoked."

Defendant maintains that the action of the Secretary is automatic under these guidelines and that a hearing is unnecessary to determine fault. The only purpose to be served by a hearing would be the authentication of the record or of the identity of the driver.

---

[1] A system of assigning points to various violations has been prescribed by the Secretary in the regulations.

Assuming, as defendant suggests, that the plaintiff had adequate time to contest the authenticity of his record, he has still been denied procedural due process. The statute allows the Secretary a great deal of discretion in taking the action he deems necessary to protect the public from unsafe drivers. Furthermore, neither the statute nor the regulation provides that suspension or revocation of a license follows automatically from conviction of a given number of traffic offenses of certain types. The statute makes suspension or revocation dependent on a determination of whether the driver's repeated involvement in collisions or conviction of offenses indicates lack of ability to use due care or disrespect for the traffic laws and the safety of others. The regulation makes suspension or revocation dependent *both* on such a determination *and* the accumulation of a given number of points, and even then the Secretary "may" but is not required to suspend or revoke the driver's license. Only when a driver has been suspended thrice in a ten-year period is the Secretary's action made mandatory.[2] Apparently in practice the accumulation of points is the only fact which is considered in determining whether to suspend or revoke, but neither the statute nor the regulation sanctions the disregard of the conditions of lack of ability to use due care or disrespect for traffic laws and the safety of others. So long, at least, as Illinois law makes a determination of the existence of such lack of ability or disregard a condition to revocation or suspension, a licensee must be given a hearing on those issues before his license can be suspended or revoked.

The defendant argues further that *Bell v. Burson* is distinguishable in that the governmental interest protected by the statute in issue in that case was inferior to

[2] In the instant case, had plaintiff's license been suspended instead of revoked, he would have then been subject to the mandatory revocation provision. Since a suspension requires the same due process safeguards as does a revocation, the defendant's elimination of a step in the revocation process is immaterial to the ultimate determination of the issues in this case.

that in the instant case. In the instant case, the state's interest is "the protection of the public health and safety on its highways." We agree with our brothers in the Western District of Pennsylvania that this "legislation is an intelligent and commendable effort to diminish the carnage on our highways by focusing attention on the most common cause of accidents, the careless and code-violating driver." *Reese v. Kassab*, 334 F.Supp. 744 (1971). However, we also agree with their ultimate conclusion that in pursuing this interest the state must also accommodate the individual's right to procedural due process.

Finally, we disagree with the defendant's argument that this is an "emergency situation" specifically excepted from the holding in *Bell v. Burson*. As an indication that this is not such an emergency situation, we point out that in at least one situation where suspension or revocation is allowed, the state furnishes a hearing before taking such action. Ill.Rev.Stat. Ch. 95½ § 6-206(a)(17). Furthermore, under Ill.Rev.Stat. Ch. 95½ § 6-205, which mandates revocation for certain offenses, such as manslaughter or driving while intoxicated, the revocation is effected only after conviction of the underlying offense.[3] A fault determination being the only distinguishing characteristic of § 6-205, it follows that, in view of the state's regulatory scheme, no emergency situation exists in this case.

In further contravention of the defendant's argument that an "emergency situation" exists is the length of time involved in the instant case between plaintiff's final conviction and his ultimate revocation. Even taking the defendant's position that the conviction was not finalized until 30 days had transpired, a period of almost a month elapsed before plaintiff was sent his notice of revocation. This period of time, while not extreme, affords ample opportunity for a hearing.

[3] The counterargument of defendant that a hearing on the issue of fault is necessary before mandatory revocation under § 6-205, whereas no fault determination need be made under § 6-206(a)(3), has been discussed previously.

We therefore conclude that the practice of the Secretary of State whereby operator's licenses are suspended or revoked under Chapter 95½ § 6-206(a)(3) of the Illinois Revised Statutes is unconstitutional by virtue of its failure to provide the affected party notice and adequate opportunity to be heard.

In view of our holding on the issue of procedural due process, we need not reach the issue of the substantive unconstitutionality of the Act in question.

Accordingly, plaintiff's motion for summary judgment is granted as to Count I of the complaint. Count II is rendered moot by this decision.

ENTER:

/s/ Philip W. Tone
Philip W. Tone, Judge
United States Court of Appeals

/s/ Richard W. McLaren
Richard W. McLaren, Judge
United States District Court

/s/ Frank J. McGarr
Frank J. McGarr, Judge
United States District Court

DATED: January 20, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity,

Defendant.

No. 75 C 1821

ORDER

This cause coming on to be heard on the motion of the defendant Michael J. Howlett, Secretary of State of Illinois, taken as a motion for summary judgment and the cross motion of the plaintiff for summary judgment, and the Court having considered the plaintiff's complaint and all motions and memoranda filed by the parties, and the Court having made and filed its findings of facts and its conclusion of law that 95½ § 6-206(a)(3) of the Illinois Revised Statutes is unconstitutional, all as set forth in the Court's Memorandum Opinion of January 20, 1976,

IT IS ORDERED, that the defendant Secretary of State, his agents, servants, employees, attorneys, and all persons in active concert and participation with them be and are hereby restrained and enjoined from enforcing Chapter 95½ § 6-206(a)(3) of the Illinois Revised Statutes.

ENTER:

/s/ Frank J. McGarr

/s/ Philip W. Tone

DATED: January 20, 1976

SUPREME COURT OF THE UNITED States

No. 75-1513

MICHAEL J. HOWLETT, Secretary of State of Illinois,
Appellant,

v.

DENNIS N. LOVE, etc.

APPEAL from the United States District Court
for the Northern District of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

October 4, 1976

Supreme Court, U. S.
FILED
JUN 15 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1513

MICHAEL J. HOWLETT, Secretary of State of Illinois, in his official capacity,

Appellant,

vs.

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Appellee.

Appeal From The United States District Court For The Northern District Of Illinois

MOTION TO AFFIRM

ALAN M. FREEDMAN
RICHARD JAY HESS
ALLEN L. RAY
Mid-South Law Office
4655 S. Michigan Boulevard
Chicago, Illinois 60653
Attorneys for Appellee

SORG/CHICAGO U.S.A.

INDEX

	PAGE
Motion To Affirm	2
Question Presented	2
Supplemental Statement Of The Case	2
Argument	3
Conclusion	13
Appendix A—Notice Of Revocation	A1
Appendix B—Illinois Revised Statutes, Chapter 95½, Section 6-205	B1
Appendix C—Illinois Revised Statutes, Chapter 95½, Section 6-206	C1
Appendix D—Appellee's Driving Record	D1
Appendix E—Affidavit of Appellee's Counsel	E1
Appendix F—Complaint	F1
Appendix G—Appellee's Affidavit In Support of Temporary Restraining Order	G1

TABLE OF AUTHORITIES

Almeida v. Lucey, 372 F. Supp. 109 (1974)	10
Armstrong v. Manzo, 380 U.S. 545 (1965)	4
Arnett v. Kennedy, 416 U.S. 134 (1974)	4, 5, 12
Bell v. Burson, 402 U.S. 535 (1971)	4, 5, 6, 9, 10
Boddie v. Connecticut, 401 U.S. 371 (1971)	9

	PAGE
Cicchetti v. Lucey, 377 F. Supp. 215 (1974)	10
Fuentes v. Shevin, 407 U.S. 67 (1972)	7, 9
Goldberg v. Kelly, 397 U.S. 254 (1970)	4
Holland v. Parker, 354 F. Supp. 196 (1973)	10
Jones v. Penny, 387 F. Supp. 383 (1974)	10
Kentucky v. Thomas, Ky., 467 S.W. 2d 335 (1971)	11
Mathews v. Eldridge, —— U.S. —— (1976)	4, 5, 12
Mitchell v. W. T. Grant, 416 U.S. 600 (1974)	12
Mullane v. Hanover Bank and Trust Co., 339 U.S. 306 (1950)	4
North Georgia Finishing v. Di-Chem Inc., 419 U.S. 601 (1974)	7, 12
Nusberger v. Wisconsin Division of Motor Vehicles 352 F. Supp. 515 (1973)	11
People v. Manikus, 106 Ill. App. 2d 315 (1969)	7
Reese v. Kassab, 334 F. Supp. 744 (1971)	10
Slone v. Kentucky, 379 F. Supp. 652 (1974)	10
Sniadach v. Family Finance Corp., 395 U.S. 337 (1969)	4, 6
Warner v. Trombetta, 348 F. Supp. 1068 (1972) aff'd. 410 U.S. 919 (1973)	10

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1513

MICHAEL J. HOWLETT, Secretary of State of Illinois, in his official capacity,

Appellant,

vs.

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Appellee.

Appeal From The United States District Court For The Northern District Of Illinois

MOTION TO AFFIRM

MOTION TO AFFIRM

The appellee, by and through counsel, moves that the judgment of the three-judge court be affirmed on the grounds that the federal constitutional questions presented are so unsubstantial as not to need further argument.

QUESTION PRESENTED

Whether Section 6-206(a)(3) of the Illinois Motor Vehicle Code (Ill. Rev. Stat. 1973, ch. 95½ §6-206(a)(3) and the administrative procedures employed pursuant to that statute fail to afford due process of law to a motor vehicle operator licensee, when the statute authorizes the Illinois Secretary of State, at his discretion and without a prior hearing, to suspend or revoke an operator's license upon a determination by the Secretary that the licensee's driving record demonstrates that the individual has been repeatedly convicted of violations which indicate a lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway.

SUPPLEMENTAL STATEMENT OF THE CASE

In order to clarify certain facts that have been omitted or confused by appellant's statement of the case, the appellee notes that the findings of fact and the findings of law in this action are more accurately related by the three-judge court in its Memorandum Opinion of January 20, 1976. See appellant's Appendix A.

ARGUMENT

THE ADMINISTRATIVE PROCEDURE OF THE ILLINOIS SECRETARY OF STATE, CONDUCTED PURSUANT TO ILLINOIS STATUTE, DENIES DUE PROCESS TO ILLINOIS DRIVERS, WHEN THE SECRETARY SEEKS TO SUSPEND OR REVOKE THE DRIVING PRIVILEGES OF AN INDIVIDUAL BECAUSE THE SECRETARY BELIEVES THAT THE DRIVER HAS BEEN REPEATEDLY CONVICTED OF VIOLATIONS WHICH INDICATE THE LACK OF ABILITY TO EXERCISE ORDINARY OR REASONABLE CARE OR INDICATES DISRESPECT FOR TRAFFIC LAWS AND THE SAFETY OF OTHERS

I.

THE NOTICE PROCEDURE AFFORDED TO THE APPELLEE DENIED HIM ADEQUATE NOTICE AND THE OPPORTUNITY TO CONTEST THE ACTION OF THE SECRETARY OF STATE AT A MEANINGFUL TIME AND MANNER

The three-judge panel found that the appellee received notice of his license revocation three days prior to its effective date. See appellant's Appendix A-2 & 3. The only advice received by the appellee regarding his right to contest this action came with the revocation notice which stated that the licensee was afforded "an opportunity for a hearing upon written request to the Secretary of State." See Notice of Revocation attached as an Exhibit in plaintiff's complaint and reproduced herein as appellee's Appendix A. This procedure constitutes a denial of procedural due process.

This Court has clearly stated that once obtained, a driver's license is "not to be taken away without that procedural due process required by the Fourteenth Amendment." *Bell* v. *Burson,* 402 U.S. 535, 539 (1971). A fundamental component of procedural due process is the right to be heard at a meaningful time and in a meaningful manner. See *Armstrong* v. *Manzo,* 380 U.S. 545 (1965), *Goldberg* v. *Kelly,* 397 U.S. 254 (1970). As stated in *Mullane* v. *Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950), this right to be heard "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce, or contest."

The appellee was not afforded the right to a hearing at a meaningful time and he was not, in effect, given notice that this matter was "pending." On June 3, when Dennis Love received the notice that a decision had been made to revoke his license effective June 6, 1975, it was a practical impossibility for Love to contest this revocation prior to the time of its effective date. This was especially true if he was required "to make a written request" just to get the hearing scheduled. In two recent decisions of this Court which limit the right of individuals to hearings prior to the time of the effective date of the governmental action, the Court relied upon the fact that the affected individuals were allowed to contest the adverse action in some meaningful way prior to the effective date of the governmental action. See *Arnett* v. *Kennedy,* 416 U.S. 134 (1974) and *Mathews* v. *Eldridge,* —— U.S. —— (1976).[1]

[1] Nevertheless, as discussed below, the appellee contends that suspension or revocation of driving privileges requires a prior evidentiary due process hearing as in *Bell* v. *Burson,* 402 U.S. 535, 539 (1971). See also *Sniadach* v. *Family Financial Corp.,* 395 U.S. 337 (1969), which required a prior notice and hearing where wages were to be taken.

In *Arnett,* the Court reviewed administrative procedures used to discharge a federal employee for cause. The majority held that an evidentiary hearing was not required because the employee received 30 days written advance notice of the reasons for his proposed discharge along with supporting written materials. He had the opportunity to respond prior to the effective date of the adverse action, and he had the opportunity for an informal conference before the effective date of the action. In *Mathews,* Social Security procedures for benefit terminations were reviewed. In that case, it was held that a prior hearing was not necessary because the individual had an opportunity, at least two months prior to the effective date of the action, to respond and to contest the tentative adverse decision of the Social Security Administration. Dennis Love had none of the procedural benefits afforded Kennedy or Eldridge, let alone the prior evidentiary hearing which *Bell* required in this situation. Based on these prior decisions of this Court, the inadequate notice, in itself, requires an affirmance of the lower court decision.

II.

THE APPELLEE HAS A SUFFICIENT AND SUBSTANTIAL INTEREST IN A GOVERNMENTAL ENTITLEMENT WHICH REQUIRES A HEARING PRIOR TO THE TIME OF DEPRIVATION

In *Bell* v. *Burson,* 402 U.S. 535, 539 (1971), this Court declared that:

> Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.

This statement from *Bell* effectively defines the interest to be protected and the nature of that protection for the purpose of the present case before the Court. Additionally, as this Court stated in *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969), a prior hearing with adequate notice was required in a situation where the property right impaired consisted of wages. In this respect, *Love* is analogous to *Sniadach.* The appellee is a truck driver and his operator's license is essential to his livelihood. The deprivation that the appellee would have suffered if the defendant had not been enjoined would have been substantial and would have had an immediate effect on his livelihood as a truck driver. As noted in *Sniadach, supra* at 343, the loss of wages may "as a practical matter drive a family to the wall."

Illinois, in fact, does recognize that a substantial interest in this government entitlement exists because it allows an individual, no matter why the license was revoked or suspended, to apply for limited driving privileges. See Ill. Rev. Stat. 1973, ch. 95½ §6-205(c) (Appendix B), and ch. 95½ §6-206(c)(3) (Appendix C). Nevertheless, while recognizing that a substantial interest exists, the state fails to provide the procedural protection that is constitutionally required in this circumstance. This is precisely the defect that this Court found to exist in *Bell.*

In *Bell,* a county clergymen's driver's license was taken without a prior hearing. His professional responsibilities, from which he derived his livelihood, required hm to travel through three rural communities on a regular basis. Dennis Love, the appellee, was the sole support of his wife, then pregnant and one child. His driver's license was essential for the maintenance of his livelihood and that of his family.

III.

THE APPELLEE'S INTEREST IN THE HARDSHIP LICENSE PROVIDED FOR BY STATUTE LACKED CONSTITUTIONAL SAFEGUARDS WHICH PRODUCED AN UNACCEPTABLE INTERRUPTION OF THIS GOVERNMENTAL ENTITLEMENT

Section 6-206(c)(3) (Appendix C) provides that an individual, no matter what the reason for the initial suspension or revocation, may be allowed to continue to drive, even if only for certain limited purposes. One such purpose is to avoid hardship where a wage earner is required to operate a vehicle to earn his livelihood. See *People* v. *Manikus,* 106 Ill. App.2d 315, 246 N.E. 2d 142, 146 (1969). This right to drive to earn a livelihood is perhaps the most significant and essential part of the general driver's license granted by the State. It is a special property interest granted by the State and one which requires particular constitutional protection. In the present case, the facts clearly demonstrate that even minimal due process protection was denied to this appellee.

In *North Georgia Finishing Inc.* v. *Di-Chem Inc.,* 419 U.S. 600, 606 (1975), this Court cited with approval *Fuentes* v. *Shevin,* 407 U.S. 67 at 86 (1972), for the proposition that:

> The Fourteenth Amendment draws no bright lines around three day, ten day or fifty day deprivation of property. Any significant taking of property by the state is within the provision of the Due Process Clause.

This proposition is particularly apposite in the present case. In this case the appellee was given three days notice of the intention of the defendant to revoke his general driver's license privileges. As discussed above, it would have been impossible to contest the action of the Secretary

prior to its effective date. If the appellee could not receive a hearing prior to the revocation of his general driving privileges, he could not, and in fact did not, receive an opportunity for a hardship hearing prior to the time of revocation. But for the Temporary Restraining Order of the lower court, there would have been a significant period of time when the right to operate a vehicle would have been interrupted.

The findings of the trial court clearly demonstrate the potential interruption and denial of the right. The trial court conditioned the granting of its Temporary Restraining Order, which restrained the State from revoking the appellee's license, upon the requirement that the appellee immediately apply for a hardship license. This Temporary Restraining Order was entered on June 6, 1975. Not until July 25, 1975, more than six weeks after the hardship application was made, and in the face of this lawsuit, did the defendant see fit to grant a hardship license to the appellee. But for the granting of the Temporary Restraining Order, the appellee would not have been able to drive to earn a livelihood for a minimum of seven weeks. This type of interruption and denial of a governmental entitlement, all without a prior hearing, was constitutionally impermissible.

IV.

NO EXTRAORDINARY GOVERNMENTAL INTEREST EXISTED TO OVERCOME THE APPELLEE'S RIGHT TO ADEQUATE NOTICE AND THE RIGHT TO A PRIOR EVIDENTIARY HEARING.

Contrary to the argument of the State, no emergency situation existed which would have allowed the State to deny the appellee adequate notice and the right to prior evidentiary hearing. The State has contended at page 10

of its Jurisdictional Statement that its interest "in the speedy removal of the safety hazard from its highways" outweighed the right of the appellee to adequate notice and a prior evidentiary hearing. The decisions of this Court when applied to the facts of this case belie the State's contention.

In *Boddie* v. *Connecticut,* 401 U.S. 371 (1971), it was stated that:

> The root requirement [was] that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event. *Id.* at 379-380.

In *Fuentes* v. *Shevin, supra* this Court reiterated the necessity for a prior hearing and amplified the meaning of "extraordinary situations." According to *Fuentes,* summary seizure or attachment of property is consistent with due process only in narrow circumstances: to secure jurisdiction in a state court to collect the internal revenue of the United States; to meet the needs of a national war effort; to prevent the economic disaster of a bank failure; to protect the public from misbranded drugs and contaminated food, *Id.* at 91-92, n. 23-28. *Fuentes* also declared that the deprivation of other interests beside outright seizure or attachment of property, requires an unusually strong governmental need for prompt action to justify such confiscation without notice and the right to a prior hearing.

Read together, *Bell, Boddie,* and *Fuentes,* leave no doubt but that circumstances must be truly unusual to justify postponing an opportunity to be heard, especially when an important interest, such as an operator's license is involved. Since *Bell,* lower federal courts, in a variety of

circumstances have affirmed the right to adequate notice and prior evidentiary hearing.[2]

Turning to the facts of this case, as discussed by the District Court at A-7 of the Jurisdictional Statement, it is clear that the State itself did not view this matter as an extraordinary situation, considering the amount of time within which the State chose to act in this alleged "emergency situation." *cf. Jones* v. *Penny,* (n.-2). The State, by its purported standard could have acted to suspend or revoke after March 31, 1975. Even giving the State, for the purpose of its argument, the benefit of the contention that it could not act until after 30 days after the conviction,[3] the lower court noted that the State did not, in fact, act to revoke until the first week of June. As the trial court noted at A-7 of the Jurisdictional Statement:

> A period of almost a month elapsed before plaintiff was sent his notice of revocation. This period of time, while not extreme, affords ample opportunity for a hearing.

The State, judged by its own action in this case, did not really view this as an emergency situation. The State's argument is, in reality, no more than an attempt to bring the "additional administrative expense" argument, which was rejected in *Bell,* within the "emergency situation" exception of *Bell, supra* at 542.

---

[2] *Holland* v. *Parker,* 354 F. Supp. 106 (1973); *Sloane* v. *Kentucky,* 379 F. Supp. 652 (1974); *Reese* v. *Kassab,* 334 F. Supp. 744 (1971); *Almeida* v. *Lucey,* 372 F. Supp. 109 (1974); *Warner* v. *Trombetta,* 348 F. Supp. 1068 (1972), *aff'd,* 410 U.S. 919 (1973); *Cicchetti* v. *Lucey,* 377 F. Supp. 215 (1974); *Jones* v. *Penny,* 387 F. Supp. 383 (1974).

[3] The last driving violation conviction occurred on March 31, 1975. The State contended below that this did not become a "final" judgment until 30 days after the conviction. There is no basis in Illinois law for such a contention. The State in fact waited two months before it acted to revoke the appellee's license.

V.

THE REVOCATION PROCEDURE IS DISCRETIONARY AND NOT MANDATORY

Contrary to the assertion of the State, the finding of the three-judge panel (at Appellant's Jurisdictional Statement A-5 & 6) as well as the statutory and regulatory scheme set out by the State, all point to the inescapable conclusion that the revocation is discretionary and not mandatory. Indicative of the Secretary's discretion are the following:

1. Ill. Rev. Stat. 1973, ch. 95½ §6-206, partially cited as appellant's Appendix D.
2. Rule 6-206, cited as appellant's Appendix E.
3. The appellee's driving record, as compiled by the Secretary, and as attached to the Secretary's brief in support of the motion to dismiss (herein as Appendix D) indicates by the code "02" that the appellee suffered a "discretionary" revocation on June 6, 1975.

Turning to the hardship portion of the general driving privilege at Ill. Rev. Stat. 1973, ch. 95½ §6-206 (c)(3) (See Ill. Rev. Stat. 1973, ch. 95½ §6-206 in its entirety as Appendix C), the statute on its face grants the Secretary complete discretion. In these circumstances, a prior hearing with adequate notice becomes even more of a constitutional necessity. See *Nusberger* v. *Wisconsin Division of Motor Vehicles,* 362 F. Supp. 515 (1973) and *Kentucky* v. *Thomas,* 467 S.W. 2d 335 (Ky. 1971).

VI.

THE REVOCATION PROCEDURE FAILS TO PROVIDE AN ADEQUATE POST-REVOCATION REMEDY

Even assuming *arguendo,* that a revocation without a prior hearing was constitutionally permissible, the statutory scheme is still defective because it fails to provide a

prompt and adequate post-revocation hearing as to both the general driving privilege and the limited hardship privilege, the latter being essential for livelihood.

In *North Georgia Finishing* v. *Di-Chem, Inc., supra,* at 613, this Court struck down a garnishment statute because the statute failed to provide for an early post-garnishment hearing. Mr. Justice Powell stated in his concurrence that:

> The most compelling deficiency in the Georgia procedure is its failure to provide a prompt and adequate post-garnishment hearing.

The proposition that a prompt and adequate post-revocation hearing is required when a prior hearing is not conducted, is further supported in *Mitchell* v. *W.T. Grant,* 416 U.S. 600 (1974), where the statute was distinguished from the statute in *North Georgia Finishing* by the fact that the *Mitchell* statute triggered an immediate hearing after the taking of the property interests. This prompt post hearing procedure saved the statute in *Mitchell.* In the present case there is no such prompt and adequate post-revocation procedure. See the uncontested affidavit of counsel, originally attached to the appellee's motion for summary judgment and reproduced herein as Appendix E.

Finally, a speedy post-revocation hearing is required in the present case because no realistic prospect of recoupment exists for the appellee, if the Secretary is found to have exercised his discretion arbitrarily or in error. In *Arnett* and *Mathews,* one key factor relied upon by the majority was that ultimate restitution to the affected individual was statutorily guaranteed if that individual should ultimately prevail. In *Mitchell* and *North Georgia Finishing,* a bond requirement was an essential element of each statute so as to guarantee that the affected individuals would be made whole if they ultimately prevailed. In this case, there is no opportunity to recoup wages lost from private employment or other damages suffered as the result of the inability of this driver to operate a motor vehicle for business purposes or personal enjoyment.

CONCLUSION

For the reasons stated herein, the appellee moves that the judgment of the three-judge court be affirmed on the grounds that the federal constitutional questions presented are so unsubstantial as not to need further argument.

Respectfully submitted,

ALAN M. FREEDMAN
RICHARD JAY HESS
ALLEN L. RAY*
Mid-South Law Office
Legal Assistance Foundation
of Chicago
4655 South Michigan Blvd.
Chicago, Illinois 60653
312-538-0733

---

* Ms. Gwyneth D. Gillingham, Senior Law Student, DePaul University, Chicago, Illinois, assisted counsel in the preparation of this Motion To Affirm.

APPENDIX

02

STATE OF ILLINOIS **OFFICE OF THE SECRETARY OF STATE** SPRINGFIELD

NOTICE OF REVOCATION

Dennis N. Love
5322 South State, Apartment #208
Chicago 60609
L100-1744-9207

07-21-49
304
06-20-75

	Mo. Day Yr.
Date of Revocation	06 06 75
License Number	L100-1744-9207
Date of Conviction	
Authority: Section *Illinois Vehicle Code*	6-206(a)3

Pursuant to the provisions of Section 6-209 of the Illinois Vehicle Code, YOU ARE HEREBY NOTIFIED that an Order revoking your Illinois drivers license or permit, your privilege to operate a motor vehicle, and your privilege of obtaining a license within this State, has been entered on the date shown above.

This action has been taken as a result of: Your having been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates disrespect for the traffic laws.

YOUR LICENSE MUST BE SURRENDERED IMMEDIATELY—SEE REVERSE

William F. Logan

William F. Logan, Administrator
Drivers License Division

IMPORTANT—READ CAREFULLY

1. All drivers licenses and permits must be immediately surrendered to the Secretary of State as required by Sections 6-109 and 6-301 of the Illinois Vehicle Code. Please use the enclosed return envelope. (Do not return this notice with your license. Keep for your records.)

2. The operation of motor vehicles by you after the effective date of this notice is not permitted and is a VIOLATION OF Section 6-303 of the Illinois Vehicle Code. Conviction of such operation is punishable by imprisonment for not more than one year and in addition a fine may be imposed not to exceed $1,000.

3. Any person whose license or permit has been revoked under the provisions of Section 6-206 of the Illinois Vehicle Code shall be afforded an opportunity for a hearing, upon written request to the Secretary of State, *If you live in Chicago or any part of Cook County*, write to the Secretary of State in case of the motor vehicle facility whose Chicago address is listed on the accompanying colored card.

4. A license which has been revoked cannot be restored or restored. However, application for a new license may be made after the expiration of one year from the date of revocation, or upon removal of cause.

BL DC-5LL3
REV. 2/0
AUG. '73

APPENDIX B

§ 6-205. Mandatory revocation of license or permit—Hardship cases

(a) Except as hereinafter provided, the Secretary of State shall forthwith revoke the license or permit of any driver upon receiving a report of such driver's conviction of any of the following offenses:

1. Manslaughter or reckless homicide resulting from the operation of a motor vehicle;

2. Violation of Section 11-501 of this Act relating to the offense of operating a motor vehicle while under the influence of intoxicating liquor or narcotic drugs;

3. Any felony under the laws of any State or the federal government in the commission of which a motor vehicle was used;

4. Violation of Section 11-401 of this Act relating to the offense of leaving the scene of a traffic accident involving death or personal injury;

5. Perjury or the making of a false affidavit or statement under oath to the Secretary of State under this Act or under any other law relating to the ownership or operation of motor vehicles;

6. Conviction upon 3 charges of violation of Section 11-503 of this Act relating to the offense of reckless driving committed within a period of 12 months;

7. Conviction of the offense of automobile theft as defined in Section 4-102 of this Act;

8. Violation of Section 11-504 of this Act relating to the offense of drag racing;

9. Violation of Chapters 8 and 9 of this Act;

10. Violation of Section 12-5 of the "Criminal Code of 1961", as amended,[1] arising from the use of a motor vehicle;

(b) The Secretary of State shall also forthwith revoke the license or permit of any driver in the following situations:

1. Of any minor upon receiving the notice provided for in Section 2-9 of the Juvenile Court Act, as amended,[2] that such minor has been adjudicated under that Act as having committed an offense relating to motor vehicles prescribed in Subsections (a), (b), (c) and (d) of Section 4-102 of this Act;

2. Of any driver, for one year, upon receiving notice of the completion of the sentence imposed upon conviction of such driver for the commission of any of the following sex offenses: rape, sexual crime against children, crime against nature, soliciting in the streets, and the manufacture, sale or delivery of controlled substances or instruments used for illegal drug use or abuse;

3. Of any driver, for 5 years, upon receiving notice of the completion of a subsequent sentence imposed upon conviction of a driver of a second sex offense named hereinabove;

4. Of any person when any other law of this State requires either the revocation or suspension of such license or permit.

(c) Whenever a person is convicted of any of the offenses enumerated in this Section, the court may recommend and the Secretary of State in his discretion, without regard to whether such recommendation is made by the court, may, if application is made therefor, issue to such person a restricted driving per-

BEST COPY AVAILABLE

Vehicle Code § 6-205

mit granting the privilege of driving a motor vehicle between his residence and his place of employment or within other proper limits, except that this discretion shall be limited to cases where undue hardship would result from a failure to issue such restricted driving permit. In each case the Secretary of State may issue such restricted driving permit for such period as he deems appropriate, except that such permit shall expire within one year from the date of issuance. A restricted driving permit issued hereunder shall be subject to cancellation, revocation and suspension by the Secretary of State in like manner and for like cause as a drivers license issued hereunder may be cancelled, revoked or suspended; except that a conviction upon one or more offenses against laws or ordinances regulating the movement of traffic shall be deemed sufficient cause for the revocation or suspension of a restricted driving permit.

(d) This Section is subject to the provisions of the Driver License Compact.

Amended by P.A. 78-663, § 1, eff. Jan. 1, 1974.

APPENDIX C

§ 6-206. Discretionary authority to suspend or revoke license or permit —Right to a hearing

(a) The Secretary of State is authorized to suspend or revoke the license, permit or driving privileges of any person without preliminary hearing upon a showing by his records or other sufficient evidence that such person:

1. Has committed an offense for which mandatory revocation of license or permit is required upon conviction;

2. Has been convicted of not less than 3 offenses against traffic regulations governing the movement of vehicles with the exception of those offenses excluded under the provisions of Section 6-204(2), committed within any 12 month period so as to indicate the disrespect for traffic laws and a disregard for the safety of other persons on the highways; conviction upon 3 charges of violation of Section 11-601 of this Act committed within a period of 12 months shall be deemed grounds for the revocation or suspension of a license or permit under this Section, provided that no such revocation or suspension shall be entered more than 6 months subsequent to the date of conviction of the 3rd offense;

3. Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway;

4. Has by unlawful operation of a motor vehicle caused or contributed to an accident resulting in death or injury to any person, except that any action taken by the Secretary of State under the provisions of this sub-section shall be confined to a period of 6 months after a conviction of the unlawful operation of a violation of a law or ordinance regulating the movement of traffic, which violation is related to such accident, or to a period of not more than one year subsequent to the date of said accident, whichever period terminates later;

5. Has permitted an unlawful or fraudulent use of such license or permit;

6. Has been lawfully convicted of an offense in another State which if committed within this State would be grounds for suspension or revocation;

7. Has refused or failed to submit to an examination provided for by Section 6-207 of this Act or has failed to pass such examination;

8. Is ineligible for such license or permit under the provisions of Section 6-103 of this Act;

9. Has made a false statement or knowingly concealed a material fact in any application for a license or permit;

10. Has displayed or represented as his own any license or permit not issued to him;

11. Has operated a motor vehicle upon a highway of this State when his drivers license or permit or privilege so to do or privilege to obtain a license or permit under this Act was revoked or suspended unless the operation was authorized by a restricted driving permit issued pursuant to this Act;

12. Has submitted to an examination or has obtained the services of another person to submit to an examination for the purpose of obtaining a drivers license or permit for some other person;

13. Has operated a motor vehicle upon a highway of this State when his drivers license was invalid under the provisions of Section 6-110 of this Act. Provided that for the first such offense the Secretary of State may suspend such license or permit not more than 60 days, for the second such offense not more than 90 days, and for the third such offense not more than 1 year;

14. Has been convicted of any violation of Section 6-301;

15. Has violated Section 21-2 of the Criminal Code of 1961 relating to criminal trespass to vehicles in which case, the suspension shall be for one year;

16. Has violated Section 11-204 of this Act relating to fleeing from a police officer;

17. Has refused to submit to a test as required under Section 11-501.1 of this Act and such person has not sought a hearing as provided for in Section 11-501 of this Act;

18. Has, since issuance of a license or permit, been adjudged to be afflicted with or suffering from any mental disability or disease.

19. Has violated Section 6-101(a) or 6-101(b) of this Act relating to driving without a license.

20. Has violated Section 6-104 of this Act relating to classification of drivers license.

(b) If any conviction forming the basis of a suspension or revocation authorized hereunder is appealed, the Secretary of State may rescind or withhold the entry of the order of suspension or revocation, as the case may be, provided that certified copy of a supersedeas or other stay order is filed with the Secretary of State. If such conviction is affirmed on appeal, the date of the conviction shall relate back to the time the original judgment of conviction was entered and the 6 month limitation hereinabove prescribed shall not apply.

(c) 1. Upon suspending or revoking the license or permit of any person as authorized in this Section, the Secretary of State shall immediately notify such person in writing of the order revoking or suspending the license or permit. Such notice to be deposited in the United States mail, postage prepaid, to the last known address of such person.

2. If the Secretary of State suspends or revokes the license of a person under sub-paragraph 2 of paragraph (a) of this Section, a person's license to drive a commercial vehicle only as an occupation shall not be revoked or suspended unless 5 offenses were committed, at least 2 of which occurred while operating a commercial vehicle in connection with his regular occupation.

Within 25 days after the mailing of a notice of suspension or revocation by the Secretary of State, any such driver may submit an affidavit on forms to be provided by the Secretary of State setting forth the facts of his employment as a driver of a commercial vehicle. The affidavit shall also state the number of offenses committed while driving a commercial vehicle in connection with his regular employment or occupation. The affidavit shall be accompanied by his driver's license which shall be suspended by the Secretary of State who shall thereupon send to said driver a permit to drive a commercial vehicle in his regular occupation. Unless such affidavit is properly completed by the driver and received by the Secretary of State within such 25 day period, such driver's license to drive any motor vehicle shall be revoked or suspended as set forth in the notice that was mailed pursuant to sub-paragraph 2 of paragraph (c) of this Section. The Secretary may revoke or suspend the license of such person to drive any vehicle other than a commercial vehicle in connection with his regular occupation upon notice of conviction of not less than 3 offenses against traffic regulations governing the movement of vehicles with the exception of those offenses excluded under Section 6-[illegible]12), committed within any 12 month period so as to indicate the disrespect for traffic laws and a disregard for the safety of other persons on the highways.

In lieu of the affidavit provided for above, the driver may request a hearing pursuant to Section 2-118 of this Act.

Any person who falsely states any fact in the affidavit required herein shall be guilty of perjury under Section 6-302 of this Act and upon conviction thereof shall have his driver's license revoked without further rights under this sub-paragraph 2.

3. At the conclusion of a hearing pursuant to Section 2-118, the Secretary of State shall either rescind or continue an order of revocation or shall substitute an order of suspension therefor; or, good cause appearing therefor, rescind, continue, change or extend his order of suspension. If the Secretary of State does not rescind his order, he may upon application therefor, to relieve undue hardship, issue a restricted driving permit granting the privilege of driving a motor vehicle between the residence and the place of employment of such person or within other proper limits. In each case the Secretary may issue such restricted driving permit for such period as he deems appropriate, except that such permit shall expire within one year from the date of issuance. A restricted driving permit issued hereunder shall be subject to cancellation, revocation and suspension by the Secretary of State in like manner and for like cause as a drivers license issued hereunder may be cancelled, revoked or suspended; except that a conviction upon one or more offenses against laws or ordinances regulating the movement of traffic shall be deemed sufficient cause for the revocation or suspension of a restricted driving permit.

(d) This Section is subject to the provisions of the Drivers License Compact.

Amended by P.A. 77-2739, § 1, eff. Oct. 1, 1972; P.A. 78-663, § 1, eff. Jan. 1, 1974; P.A. 79-1141, § 1, eff. Jan. 1, 1976.

APPENDIX D

L100-1744-9207 03600
07-21-49 M 06-23-75 75-06-24

THE FOLLOWING RECORD ABSTRACT IS FURNISHED FROM THE DRIVERS LICENSE FILE OF THE PERSON IDENTIFIED ABOVE, PURSUANT TO THE PROVISIONS OF THE ILLINOIS VEHICLE CODE

DENNIS N LOVE L100-1744-9207
5322 S STATE APT 208
CHICAGO 07 21 49

M 6 01 105 BLK BRN 1 06 26 74 D * 0-0-0 07 21 77

Valid Temporary Restricted Driving Permit

TYPE ACTION	DATE OF ARREST	DATE OF ACTION	DESCRIPTION OF ACTION	ACCIDENT OR DOCKET NO.	TERMINATION DATE OF SUSPENSION	STOP IN EFFECT
96	04 21 68	05 21 68	1 103 00	935489		
99	09 15 68	10 17 68	7 202 00	5831989		
99	08 20 68	10 10 68	7 218 00	5824431		
99	08 14 69	08 27 69	1 049 01	6871409		
03		11 04 69	6 206 A2		01 04 70	NO
73		01 04 70	6 206 A2			
94	11 12 69	01 29 70	6 210 01	6756794		
03		03 17 70	6 303 B0		05 17 70	NO
73		05 17 70	6 303 B0		05 17 70	
14		04 03 74		118019		
99	08 24 74	11 21 74	1 0601 03	45925		
99	08 16 74	09 06 74	8 0601 07	265516		
60		03 27 75				
99	02 12 75	03 31 75	1 0601 03	2741482		
02		06 06 75	6 206 A3			YES
47		06 06 75				
10		06 17 75		35		

This is to certify, that to the best of my knowledge and belief, this is a true and correct record of my traffic driving record as the information set out herein is a true and accurate copy of the captioned individual's driving record, furnished by driver license number, and I certify that all [illegible] contained herein pertain to the captioned individual.

Secretary of State

(SEE REVERSE FOR EXPLANATION OF CODES AND COLUMN HEADINGS)

EXPLANATION OF CODES AND COLUMN HEADINGS

Although most of the information appearing at the top of the abstract are self-explanatory, two need clarification.

S.E. "9" indicates a Secretary of State instruction reported to Secretary of State.

TYPE: This indicates one of the following types of licenses:

1. Driver's License
2. Chauffeur's License
3. Corrected Driver's License
4. Instruction Permit
5. Duplicate Instruction Permit
6. Corrected Instruction Permit

TYPE ACTION . . . .

01 MANDATORY REVOCATION
02 DISCRETIONARY REVOCATION
03 DISCRETIONARY SUSPENSION
04 SAFETY RESPONSIBILITY SUSPENSION
05 FINANCIAL RESPONSIBILITY SUSPENSION
06 UNSATISFIED JUDGMENT SUSPENSION
07 REVOCATION PURSUANT TO 6A-205 (3)
08 CANCELLATION OF LICENSE
09 MANDATORY SUSPENSION
10 ARREST ORDER ISSUED
12 CITED FOR REVOCATION
13 SIGNED AFFIDAVIT FOR LOST OR STOLEN LICENSE, LIEU OF BAIL, ETC.
14 COLLISION INVOLVING PROPERTY DAMAGE
15 COLLISION INVOLVING FATAL INJURY
16 COLLISION INVOLVING PERSONAL INJURY
21 TERMINATION OF SAFETY RESPONSIBILITY SUSPENSION
22 "STOP" PLACED IN FILE
27 LICENSE SURRENDERED TO FOREIGN STATE AND RETURNED TO ILLINOIS
28 REPORTED CLEARED
32 DENIAL OF RESTRICTED DRIVING PERMIT
33 DENIAL OF LICENSE
34 EXTENSION OF REVOCATION
35 EXPIRATION OF SUSPENSION
40 FORMAL HEARING
41 HEARING BOARD REVIEW
47 F.R. FUTURE PROOF REQUIRED
49 DRIVER TRAINING INSTRUCTOR OR SCHOOL 6-15 DRIVER
50 INFORMAL CONFERENCE HELD
52 SHOW CAUSE HEARING . . . RECOMMEND ACTION
53 SHOW CAUSE HEARING . . . RECOMMEND NO ACTION
55 6-111 OR 6A-111 CONFERENCE
60 WARNING LETTER ISSUED
71 PROBATIONARY PERMIT ISSUED
72 REINSTATEMENT AFTER EXTENDED REVOCATION
73 TERMINATION OF SUSPENSION
74 REINSTATEMENT AFTER REVOCATION
75 TERMINATION OF EXTENDED SUSPENSION
76 TERMINATION OF FINANCIAL RESPONSIBILITY SUSPENSION
77 TERMINATION OF UNSATISFIED JUDGMENT SUSPENSION
78 RESTRICTED DRIVING PERMIT ISSUED
84 F.R. FUTURE PROOF FILINGS COMPLETED
93 IMMEDIATE ACTION BOND FORFEITURE (NO POINTS ASSIGNED)
94 IMMEDIATE ACTION CONVICTION (NO POINTS ASSIGNED)
95 BOND FORFEITURE (NO POINTS ASSIGNED)
96 CONVICTION (NO POINTS ASSIGNED)
97 BOND FORFEITURE (POINTS ASSIGNED)
99 CONVICTION (POINTS ASSIGNED)

OTHER CODES

DATE OF ARREST: The column with this heading refers to the date this traffic ticket was issued.

DATE OF ACTION: The column with this heading refers to the date the action was taken; e.g., the conviction date in the case of a traffic law violation, rather than the date of the offense. There is one exception. . . In the case of a discretionary suspension (Type Action 03), the date which the suspension becomes effective is inserted, instead of the date which the order was entered and filed.

DESCRIPTION OF ACTION:

DESCRIPTION OF OFFENSE: This column describes the type or nature of a traffic offense. The code which is used here is composed of the Chapter and Section number of the Illinois Vehicle Code, Uniform Act Regulating Traffic on Highways or the Municipal Code of the City of Chicago. For example, offense code 018.00 refers to Section 48 of the Uniform Act Regulating Traffic On Highways. . . "Reckless Driving". The parallel offense of the Illinois Vehicle Code will appear as 105-03.00. .

The single digit code which precedes the Section number refers to the identity of the law. . . 1. Illinois Vehicle Code or Uniform Act Regulating Traffic on Highways . . . 2. Local Ordinance (other than Chicago) . . . 3. Illinois Tollway Laws and Regulations . . . 4. Penal Code (felony). . . . 6. The Illinois Driver Licensing Law. . . 7. Chicago Municipal Ordinance . . . 8. Foreign State and Other.

STATUTORY AUTHORITY: The code used here refers to the chapter and section of the Illinois Vehicle Code or the Illinois Vehicle Law which provides the authority for the action taken; e.g., 6-205 A2 and 6A-205 A2 is a mandatory revocation of a license after conviction of operating a motor vehicle while under the influence of intoxicating liquor.

ACCIDENT OR DOCKET NUMBER: This column contains the docket number or arrest ticket number (when the same) of a specific traffic offense. It also contains the motor vehicle accident number which is assigned to each case by the Safety Responsibility Section of the Highway Division.

TERMINATION OF SUSPENSION: This column indicates the termination date of the discretionary suspension. In cases where the length of the suspension is indicated by the number of months, such as "6".

STOP IN EFFECT: This column indicates if a suspension or revocation is in effect.

BEST COPY AVAILABLE

APPENDIX E

AFFIDAVIT

I, Alan M. Freedman, attorney at law, on oath state that I represented the following persons at administrative hearings before a Hearings Officer of the Illinois Secretary of State, Drivers License Division. These hearings were held to review the propriety of the Secretary's revocation of each party's Illinois drivers license. In every case, a minimum of four months elapsed between the filing of a written request for a hearing and the rendering of a final administrative decision. In one instance, the appellant has been waiting more than nine months for a determination of her appeal.

Mr. William Smith 4362 S. Wentworth Ave. Chicago, Illinois 60609 D.L.#: S 530-9202-0181	Hearing requested: 3-1-73 Hearing held: 3-21-73 Decision rendered: 7-6-73 Results: Revocation lifted
Mr. Lee Simmons 5952 S. Morgan St. Chicago, Illinois 60621 D.L.#: S 552-5200-3345	Hearing requested: 3-13-75 Hearing held: 4-4-73 Decision rendered: 6-28-73 Results: Revocation lifted
Mr. Daniel A. Shelly 406 E. 109th St. Chicago, Illinois 60628 D.L.#: S 400-1611-4284	Hearing requested: 7-13-73 Hearing held: 8-2-73 Decision rendered: 1-8-74 Results: Revocation lifted
Ms. Verlenia M. Harris 942 E. 76th St. Chicago, Illinois 60619 D.L.#: H 620-8734-5760	Hearing requested: 10-14-74 Hearing held: 12-3-74 Decision rendered: none to date

.....

Alan M. Freedman

Subscribed and sworn to before me this ..... day of 1975

.....

Notary Public

APPENDIX F

FOR THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT, EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Plaintiff

v.

MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity

Defendant

---

75 C 1821

COMPLAINT

1. This is an action for injunctive relief wherein the plaintiff Dennis N. Love seeks to enjoin the defendant Michael J. Howlett from revoking the driver's license of the plaintiff and others similarly situated without a hearing prior to revocation. This is also an action to declare the described practice to be in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

2. Jurisdiction is conferred upon the court by Title 28 Section 1343 of the United States Code, providing for jurisdiction over claims arising under Title 42, Section 1983 and the Fourteenth Amendment to the United States Constitution. Jurisdiction is also conferred upon this Court under Title 28, Sections 1331, 2201 and 2202 of the United States Code. This controversy exceeds the amount of $10,000 exclusive of interest and costs. An application is

hereby made for the convening of a three-judge federal district court to hear and determine this matter pursuant to 28 U.S.C. 2281 and 2284.

3. The plaintiff Dennis N. Love is a resident of Chicago, Illinois, presently employed as a truck driver, whose license to operate a motor vehicle has been revoked effective June 6, 1975 pursuant to the Illinois Motor Vehicle Code, (hereinafter *Code*) Chapter 95½, Illinois Revised Statutes, Section 6-206(a)(3), a copy of which is attached hereto as exhibit A.

4. The defendant Michael J. Howlett is the Secretary of State of the State of Illinois and is authorized, pursuant to Chapter two of the *Code,* to issue, suspend and revoke operator licenses in the State of Illinois.

5. The defendant Howlett derives his authority to suspend or revoke an operator's license without a preliminary hearing pursuant to 95½ I.R.S. 6-206(a).

6. Dennis N. Love brings this action on his own behalf and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all persons licensed to operate motor vehicles by the State of Illinois and whose licenses are subject to revocation pursuant to 95½ I.R.S. 6-206(a)(3). The class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims and defenses of the named plaintiff are typical of the claims and defenses of the class; the named plaintiffs will fairly and adequately protect the interests of the class; the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the defendants; defendants have acted and refused to act on grounds generally ap-

plicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; and questions of law and fact common to class members predominate over questions affecting individual members, and a class action is superior to other available methods for the fair and efficient methods of adjudication.

7. On or about June 3, 1975, the plaintiff received, without prior expectation or notice, a statement from the Office of the Secretary of State, pursuant to 95½ I.R.S. 6-209, that his license to operate a motor vehicle had been revoked effective June 6, 1975, a copy of the said statement being attached hereto as exhibit B. The said notice was postmarked June 2, 1975.

8. 95½ I.R.S. 6-206(a)(3) violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution in that it denied the plaintiff and others similarly situated a hearing prior to the revocation action of the defendant.

9. The plaintiffs have no adequate remedy at law.

WHEREFORE the plaintiff on his own behalf and on behalf of all persons similarly situated, prays as follows:

1. That a three-judge court be convened pursuant to 28 U.S.C. 2281, 2284.

2. That the Court enter a declaratory judgment declaring 95½ I.R.S. 6-206(a)(3) to be violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

3. That the Court enter an injunction to enjoin the enforcement of 95½ I.R.S. 6-206(a)(3) by the defendant Secretary of State, his agents and his successors in office.

4. That the Court award appropriate damages.

5. That the Court enter such appropriate relief as may be fit and proper.

COUNT II

1. This is an action for injunctive relief wherein the plaintiff Dennis N. Love seeks to enjoin the defendant Michael J. Howlett from revoking the driver's license of the plaintiff and others similarly situated pursuant to 95½ I.R.S. 6-206(a)(3), the said statute being vague and failing generally to give to the plaintiff and others similarly situated adequate notice of the standards used by the defendant Secretary of State when making the determination to suspend or revoke, all in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

2-7. Plaintiff realleges paragraphs two through seven of Count I of the Complaint as paragraphs two through seven of Count II of the Complaint.

8. The plaintiff has no adequate remedy at law.

WHEREFORE the plaintiff prays as follows:

1. That a three-judge court be convened pursuant to 28 U.S.C. 2281, 2284.

2. That the Court enter a declaratory judgment declaring 95½ I.R.S. 6-206(a)(3) to be violative of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

3. That the Court enter an injunction enjoining the defendant Secretary of State his agents and his successors in office from suspending or revoking operator licenses pursuant to 95½ I.R.S. 6-206(a)(3).

4. That the Court award appropriate damages.

5. That the Court enter such appropriate relief as may be fit and proper.

/s/ Alan M. Freedman

/s/ Richard J. Hess

/s/ Allen L. Ray

Alan M. Freedman
Richard J. Hess
Allen L. Ray
Woodlawn Law Office
1105 East 63rd Street
Chicago, Illinois 60637
955-6300

APPENDIX G

FOR THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT, EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Plaintiff

v.

MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity

Defendant

---

75 C 1821

AFFIDAVIT IN SUPPORT OF MOTION
FOR TEMPORARY RESTRAINING ORDER

Dennis N. Love, being first duly sworn, does deposes and state as follows:

1. I am the plaintiff in the above captioned case. I have knowledge of the facts contained herein and could testify competently thereto if called as a witness.

2. I reside at 740 East 68th Street, Chicago, Illinois with my wife Kathy Love and one child, Eric Love.

3. My wife is presently pregnant.

4. I am 25 years of age and have been licensed to operate a motor vehicle since 1968.

5. My first and only employment upon being discharged from the United States Army has been with the Thompson-Starr Route Company as a truck driver.

6. My education ended after the second year of high school and I have no training in any other type of employment which would enable me to support my family.

7. If my driver's license is revoked, I will be unable to continue my employment as a truck driver.

8. The loss of my driver's license will cause great hardship and will threaten me with immediate and future loss of a livelihood.

/s/ Dennis N. Love

Subscribed and sworn to
before me this 5th day
of June, 1975.

.....
Notary Public

Supreme Court, U. S.
FILED
DEC 3 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1513

MICHAEL J. HOWLETT, SECRETARY OF STATE OF ILLINOIS,

Appellant,

vs.

DENNIS N. LOVE,

Appellee.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

BRIEF AND ARGUMENT FOR APPELLANT

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
160 North LaSalle Street, Suite 900,
Chicago, Illinois 60601 (793-3500),
Attorney for Appellant.

PAUL J. BARGIEL,
PATRICIA ROSEN,
STEPHEN R. SWOFFORD,
MARY STAFFORD,
Assistant Attorneys General,
160 North LaSalle Street, Suite 800,
Chicago, Illinois 60601 (793-5635),
Of Counsel.

Printed by Authority of the State of Illinois—12-2-76—80

TABLE OF CONTENTS

PAGE

Opinion Below 1

Jurisdiction 2

Question Presented 3

Constitutional Provisions, Statutes, and Regulations Involved 3

Statement of the Case 4

Summary of Argument 7

Argument:

The Revocation Or Suspension Of A Driver's License Without A Preliminary Hearing, Based Upon The Number Of Traffic Violations For Which A Driver Has Been Convicted, Comports With The Principles Of Due Process Of Law 9

Conclusion 25

Appendices A1, B1, C1

Authorities Cited

Federal Cases:

Arnett v. Kennedy, 416 U.S. 134, 40 L.Ed.2d 15 (1974) 10

Bell v. Burson, 402 U.S. 535, 29 L.Ed.2d 90 (1971) 7, 15, 16, 19, 21, 24

Bibb v. Navajo Freight Lines, 359 U.S. 520, 3 L.Ed. 2d 1003 (1959) 11

Board of Regents v. Roth, 408 U.S. 564, 33 L.Ed.2d 548 (1972) 9

Bourjois, Inc. v. Chapman, 301 U.S. 183, 81 L.Ed. 1027 (1937) 10

Cafeteria Workers v. McElroy, 367 U.S. 886, 6 L.Ed. 2d 1230 (1961) 10

Ewing v. Mytinger and Casselberry, Inc., 339 U.S. 594, 94 L.Ed. 1088 (1954) 21

Fahey v. Mallonee, 332 U.S. 245, 91 L.Ed. 2030 (1947) 21

Frost v. Weinburger, 515 F.2d 57 (2d Cir. 1975) 10

FTC v. Dean Foods Co., 384 U.S. 597, 16 L.Ed.2d 802 (1966) 21

Goldberg v. Kelly, 397 U.S. 254, 25 L.Ed.2d 287 (1970) 10

Goss v. Lopez, 419 U.S. 565, 42 L.Ed.2d 725 (1975) 8, 20

Meyer v. Nebraska, 262 U.S. 390, 67 L.Ed. 1042 (1923) 9

Morton v. Dow, 515 F.2d 1302 (10th Cir. 1975) 21

North American Cold Storage Co. v. City of Chicago, 211 U.S. 306, 53 L.Ed. 195 (1908) 21

Perez v. Campbell, 402 U.S. 637, 29 L.Ed.2d 233 (1971) 22

Scott v. Hill, 407 F.Supp. 301 (E. D. Va. 1976) 7, 19

Wall v. King, 206 F.2d 878 (1st Cir. 1953), *cert. denied*, 346 U.S. 915, 98 L.Ed. 411 (1953) 9, 11

West Coast Hotel Co. v. Parrish, 300 U.S. 379, 81 L. Ed. 703 (1937) 9

Wright v. Malloy, 373 F.Supp. 1011 (D.Va. 1974), *aff'd. without opinion*, 419 U.S. 987, 42 L.Ed.2d 261 (1974) 7, 18

State Cases:

Abraham v. State, 301 So.2d 11 (Fla. 1974), *app. dismd.*, 420 U.S. 941, 43 L.Ed.2d 420 17

Blydenburg v. David, 413 S.W.2d 284 (Mo. 1967) 12

Broughten v. Warren, 281 A.2d 625 (Del. 1971) 22

Cadieux v. Macduff, 1 App.Div.2d 360, 250 NYS2d 138 (1956), *app. dismd.*, 1 NY2d 827, 135 N.E.2d 717 (1956) 14

Cook v. Bright, 208 Cal.App.2d 98, 25 Cal.Rptr. 116 (1962) 12

Cox v. Hjelle, 207 N.W.2d 266 (N.D. 1973) 16, 24

Gleason v. Wisconsin Department of Transportation, 61 Wis.2d 562, 213 N.W.2d 74 (1973) 23

Haswell v. Powell, 38 Ill.2d 161, 230 N.E.2d 178 (1968); *app. dismd.*, 20 L.Ed.2d 250 (1968) 11

Hough v. McCarthy, 54 Cal.2d 273, 353 P.2d 276 (1960) 12

Jones v. Kirkman, 138 So.2d 513 (Fla. 1962) 12

Ratlif v. Lampton, 32 Cal.2d 226, 195 P.2d 792 (1948) 14

Spurbeck v. Statton, 252 Iowa 259, 106 N.W.2d 660 (1960) 12

State ex rel. Ralston v. State Department of Licenses, 60 Wash.2d 535, 374 P.2d 571 (1962) 12

State v. Sinner, 207 N.W.2d 495 (N.D. 1973) 17

Stauffer v. Weedlun, 188 Neb. 105, 195 N.W.2d 218 (1972) 17

Zarsky v. State of Florida, 300 So.2d 261 (Fla. 1974) 17

In The

Supreme Court of the United States

October Term, 1975

No. 75-1513

MICHAEL J. HOWLETT, SECRETARY OF STATE OF ILLINOIS,

Appellant,

vs.

DENNIS N. LOVE,

Appellee.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

BRIEF AND ARGUMENT FOR APPELLANT

OPINION BELOW

The opinion of the United States District Court for the Northern District of Illinois is reproduced in full in Appendix A.

JURISDICTION

Appellee, Dennis N. Love, instituted this class action against the appellant under 28 U.S.C., §§ 1331, 1343, 2201 and 2202 and 42 U.S.C., § 1983 challenging section 6-206(a)(3) of the Illinois Motor Vehicle Code (Ill. Rev. Stat. 1975, ch. 95 1/2, § 6-206(a)(3)), on the ground that it denies appellee due process of law in violation of the fourteenth amendment to the United States Constitution. Section 6-206(a)(3), as applied through administrative rules, and with reference to related statutory provisions, authorizes the Secretary of State of Illinois to suspend or revoke a driver's license without preliminary hearing, based on the driver's traffic convictions and the number of points the driver has accumulated on those convictions. Appellee alleged this section was unconstitutional both on its face and as applied, and sought declaratory and injunctive relief.

A three-judge court, convened pursuant to 28 U.S.C., §§ 2281 and 2284, entered a permanent injunction granting appellee the relief sought on January 20, 1976. The district court held that the statute denied appellee adequate notice and hearing in violation of the fourteenth amendment to the United States Constitution.

Defendant, Michael J. Howlett, filed his Notice of Appeal on February 18, 1976. Defendant has invoked the jurisdiction of this Court to review the decision of the three-judge district court by virtue of 28 U.S.C. § 1253. This Court noted probable jurisdiction on October 4, 1976.

QUESTION PRESENTED

Whether section 6-206(a)(3) of the Illinois Motor Vehicle Code (Ill. Rev. Stat. 1975, ch. 95 1/2, § 60-206(a)(3)), which authorizes the Secretary of State of Illinois to suspend or revoke a driver's license without preliminary hearing based on the number of traffic violations for which the driver has been convicted and the number of "points" accumulated on those convictions, affords the driver due process of law.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

U. S. Const., amend. XIV;

Ill. Rev. Stat., 1975, ch. 95 1/2, § 6-206;

Rule 6-206, promulgated under the Illinois Vehicle Code.

STATEMENT OF THE CASE

The appellee, Dennis N. Love, (hereinafter referred to as "plaintiff"), instituted this class action to enjoin appellant-defendant, Michael J. Howlett, (hereinafter referred to as the "Secretary of State"), from revoking the plaintiff's driver's license, and the licenses of others similarly situated, pursuant to an alleged unconstitutional provision of the Illinois Motor Vehicle Code. Section 6-206(a)(3) of the Code (Ill. Rev. Stat. 1975, ch. 95 1/2, § 6-206(a)(3)) authorizes the Secretary of State to suspend or revoke the license of any driver without preliminary hearing based on the information contained in the driver's record.

On May 28, 1975, the Secretary of State mailed the plaintiff a notice of an order revoking his driver's license, effective June 6, 1975. Plaintiff thereupon filed the instant suit in the district court, which on June 6th granted plaintiff's motion for a temporary restraining order, pending a full hearing on the issues in the case. The temporary restraining order was conditioned on plaintiff's application for a hardship license, which was subsequently granted.

In his complaint, filed June 5, 1975, plaintiff challenges the constitutionality of section 6-206(a)(3) of the Code, pursuant to which his license had been revoked, and seeks to enjoin the enforcement of this statute. Plaintiff asserts that this section violates the due process clause in that it denies plaintiff a hearing prior to revocation.

Section 6-206(a)(3) authorizes the Secretary of State to revoke or suspend the license of any person without preliminary hearing upon a showing by the licensee's

record that such person has been repeatedly convicted of violations which indicate the lack of ability to exercise ordinary and reasonable care or indicate disrespect for traffic laws and the safety of others. Following revocation, the licensee is entitled to a hearing under section 2-118 of the Code. Ill. Rev. Stat. 1975, ch. 95 1/2, § 2-118.

Rule 6-206(a)(3) of the Rules and Regulations under the Illinois Vehicle Code, promulgated by the Secretary of State pursuant to section 2-104 of the Code (Ill. Rev. Stat. 1975, ch. 95 1/2, § 2-104 of the Code (Ill. Rev. Stat. 1975, ch. 95 1/2, § 2-104), provides that a driver who has had his license suspended three times within a ten-year period shall have his license revoked. Section 6-206(a)(2) of the Code and Rule 6-206(a)(2) authorize the Secretary of State to suspend a license without preliminary hearing upon the licensee's conviction for three traffic offenses within a 12-month period. The length of the suspension is governed by the number of points a driver has accumulated on those convictions, each type of offense being assigned a certain number of points according to its severity. Certain minor offenses (Ill. Rev. Stat. 1973, ch. 95 1/2, § 6-204(a)(2)) do not count toward suspension and have no points assigned to them. Rule 6-206 is reprinted in relevant part at Appendix C.

The plaintiff's driving record, reported from 1968, shows numerous convictions for traffic violations. Plaintiff's license was first suspended on November 4, 1969, for a period of two months, pursuant to section 6-206(a)(2) of the Code, and Rule 6-206(a)(2) (three convictions in 12-month period). His license was suspended a second time on March 17, 1970, for a period of two months upon his conviction for operating a vehicle while his license was suspended, pursuant to section 6-303(b) of the Code (Ill. Rev. Stat. 1975, ch. 95 1/2, § 6-303(b)), which requires the Secretary to take such action.

On March 31, 1975, the plaintiff was convicted of his third speeding violation within a seven-month period. The Secretary had sent plaintiff a letter warning that a third conviction would result in the loss of his driving privileges on March 27th. Thereafter, the plaintiff's license was revoked pursuant to section 6-206(a)(3) of the Code and Rule 6-206(a)(3) (three suspensions within a ten-year period). The district court found it immaterial that the Secretary had not taken the intermediate step of suspending plaintiff's license for his three convictions in one year, pursuant to section 6-206(a)(2) of the Code and Rule 6-206(a)(2) (Appendix B).

The plaintiff's complaint alleges that a revocation under section 6-206(a)(3) is a denial of due process of law in that it fails to provide adequate notice and hearing on the issue of such revocation prior to the actual revocation. A second count alleges that the statute is unconstitutionally vague in violation of due process of law because the statute fails to adequately inform the licensee of the standards used to determine if revocation is applicable.

Plaintiff's request for a hearing by a three-judge panel on the issue of the constitutionality of section 6-206(a)(3) was granted on June 9, 1975. The three-judge court entered its Memorandum Opinion and Order on January 20, 1976, on cross motions for summary judgment. The court held that plaintiff's right to procedural due process was denied by the practice of the Secretary under section 6-206(a)(3), because a separate hearing on the issue of revocation was not provided prior to the actual issuance of a revocation order. The court found it unnecessary to rule on plaintiff's vagueness challenge to the statute in view of its holding on the procedural due process issue. The court also entered a separate injunction order, *nunc pro tunc*, as of January 20, 1976, on

April 13, 1976, clarifying its original order. The latter order concludes that section 6-206(a)(3) is unconstitutional, and enjoins the Secretary from enforcing that section. The third member of the panel, the Honorable Richard W. McLaren, United States District Court, did not sign this order because he was deceased.

The plaintiff's class was never certified.

SUMMARY OF ARGUMENT

The Illinois statutory scheme for suspension and revocation of driving privileges without a prior hearing, based upon convictions for motor vehicle violations, comports with the principles of due process of law.

In *Bell v. Burson*, 402 U.S. 535, 29 L. Ed. 2d 90 (1971), this Court decided that the due process clause of the Fourteenth Amendment requires the state to grant an individual driver a hearing to determine whether a reasonable possibility of a judgment against him exists as a result of an accident before a driver's license or motor vehicle registration could be suspended under the state's financial responsibility law.

The Illinois statutory scheme for suspending or revoking driver's licenses affords individuals due process of law because each driver has an opportunity to contest fault on the underlying convictions. *Wright v. Malloy*, 373 F. Supp. 1011 (D. Va. 1974), aff'd. 95 S. Ct. 297, 42 L. Ed. 2d 261 (1974); *Scott v. Hill*, 407 F. Supp. 301

(E.D. Va. 1976). A further independent hearing is not necessary. The only benefit to the individuals which an additional hearing could serve would be to eliminate the possibility of administrative error in calculations or mistaken identity. Weighing this benefit against the strong interest of the State in protecting the general welfare by the speedy removal of dangerous drivers from the highways, it is clear that the State should not be required to grant such individuals a further hearing.

Furthermore, even assuming, *arguendo*, that due process would require an additional administrative hearing prior to suspension or revocation, repeated convictions for motor vehicle violations constitutes an emergency situation which obviates the necessity for such a hearing. *Goss v. Lopez*, 419 U.S. 565, 42 L. Ed. 2d 725 (1975).

ARGUMENT

THE REVOCATION OR SUSPENSION OF A DRIVER'S LICENSE WITHOUT A PRELIMINARY HEARING, BASED UPON THE NUMBER OF TRAFFIC VIOLATIONS FOR WHICH A DRIVER HAS BEEN CONVICTED, COMPORTS WITH THE PRINCIPLES OF DUE PROCESS OF LAW.

The due process clause of the Fourteenth Amendment protects individuals from unreasonable and unjustifiable state deprivations of personal liberty. *Board of Regents v. Roth*, 408 U.S. 564, 571-72, 33 L. Ed. 2d 548 (1972). Although an exact description of what constitutes such a protectible "liberty" has never been fully articulated, it has long been held that such liberty encompasses much more than the simple right to be free from unwarranted bodily restraint. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 81 L. Ed. 703 (1937); *Meyer v. Nebraska*, 262 U.S. 390, 67 L. Ed. 1042 (1923). In *Wall v. King*, 206 F. 2d 878 (1st Cir. 1953), *cert. den.* 346 U.S. 915, 98 L. Ed. 411 (1953), the Court held that the personal liberty provision of the due process clause covered the use of a motor vehicle:

> We have no doubt that the freedom to make use of one's own property, here a motor vehicle, as a means of getting about from place to place, whether in pursuit of business or pleasure, is a "liberty" which under the Fourteenth Amendment cannot be denied or curtailed by a state without due process of law. (206 F. 2d at 882).

However, the interpretation and application of the due process clause does not lend itself to the promulgation of an inflexible procedure universally applicable to every situation. Due process does not require a prior adversary hearing in all cases in which a significant private interest is jeopardized by governmental regulatory action.

Cafeteria Workers v. McElroy, 367 U.S. 886, 895, 6 L. Ed. 2d 1230 (1961); *Bourjois, Inc. v. Chapman*, 301 U.S. 183, 81 L. Ed. 1027 (1937). Due process of law, within administrative procedures, requires only the opportunity to be heard "at a meaningful time and in a meaningful manner." *Goldberg v. Kelly*, 397 U.S. 254, 25 L. Ed. 2d 287 (1970). The required degree of procedural safeguards applicable to administrative proceedings "varies directly with the importance of the private interest affected and the need for and usefulness of the particular safeguard in the given circumstances . . ." *Frost v. Weinburger*, 515 F. 2d 57, 66 (1975) (citing *Arnett v. Kennedy*, 416 U.S. 134, 40 L. Ed. 2d 15 (1974)).

Any analysis of a purported deprivation of procedural due process must, therefore, necessarily begin by first identifying the particular private and governmental interests involved, and then weighing the relative importance of these interests. *Goldberg v. Kelly, supra*, 397 U.S. at 263.

> The governmental interests on the one hand and the individual interests on the other must be balanced and the procedures established must be considered in the light of various questions which courts have postulated from time to time: How was the individual likely to be hurt? What governmental interest is affected, if at all, by extending procedural safeguards to cover the challenged action? *Gonzales v. Freeman*, 334 F. 2d 570, 579-80 (D.C. Cir. 1964).

Here, the plaintiff's interest in not having his driver's license revoked pursuant to section 6-206(a)(3) of the Illinois Code must be balanced against the strong interest of the State of Illinois in the protection of the health and safety of its citizens. Specifically, the interest of the plaintiff served by a pre-revocation hearing must be

weighed against the State's interest in the speedy removal of a safety hazard from its highways.

Unquestionably, the State has the right to regulate the use of its highways and to limit their use to those who do not present a risk to the public health and safety. *Bibb v. Navajo Freight Lines*, 359 U.S. 520, 3 L. Ed. 2d 1003 (1959). In *Haswell v. Powell*, 38 Ill. 2d 161, 230 N.E. 2d 178 (1967), *app. dismd.* 88 S. Ct. 1408, 20 L. Ed. 2d 250, the Illinois Supreme Court held that the suspension of a driver's license, without a preliminary hearing, after conviction of three moving violations, was a reasonable exercise of the police power for the safety of the public:

> Whether the operation of a motor vehicle is termed a right or a privilege, we think it clear that such operation is subject to regulation under the police power. (citation omitted) We conceived the issue to be whether the statute under attack is a reasonable exercise of this power. Considering the ever-increasing death toll on our highways we view the suspension of a driver's license after conviction of three moving violations to be a reasonable exercise of the police power for the safety of persons on the highway. (230 N.E. 2d at 180)

A license suspension for driving while intoxicated was upheld without a preliminary hearing in *Wall v. King*, 206 F. 2d 878 (1st Cir. 1958), *cert. den.* 346 U.S. 915, 98 L. Ed. 411. The Court noted, 206 F. 2d 883,

> * * * We have no doubt that these provisions of law are reasonable regulations in the interest of safeguarding lives and property from highway accidents. The incidental hardship upon an individual motorist, in having his license suspended pending investigation and review, must be borne in deference to the greater public interest served by the statutory restriction.

State laws allowing the revocation or suspension of driving privileges without prior notice and hearing have frequently been sustained against constitutional attacks on their validity. See: *Spurbeck v. Statton*, 106 N.W. 2d 660 (Iowa 1960) (pre-suspension hearing not required where licensee had committed an offense for which mandatory revocation of license was required upon conviction. 106 N.W. 2d at 664-65); *Jones v. Kirkman*, 138 So. 2d 513 (Fla. 1962) (pre-suspension hearing not required under a "point-system" statute. 138 So. 2d at 515); *Blydenburg v. David*, 413 S.W. 2d 284 (Mo. 1967) (prior notice and hearing not required before suspension or revocation under State's "implied consent" law. 413 S.W. 2d at 290. Several courts have held that suspension or revocation of driving privileges for driving while under the influence of intoxicating liquor was permissible without prior notice or hearing: *State ex rel. Ralston v. State Department of Licenses*, 60 Wash., 2d 535, 374 P. 2d 571, 573 (1962); *Hough v. McCarthy*, 59 Cal. 2d 273, 353 P. 2d 276, 284 (1960); *Cook v. Bright*, 208 Cal. App. 2d 98, 102, 25 Cal. Rptr. 116 (1962).

It is submitted that the Illinois Code (Section 6-206(a)(3)) and the Secretary's practices under that section provide due process, and that plaintiff in the instant case has had an opportunity to be heard appropriate to the nature of the case. Section 6-206(a)(3) provides:

> (a) The Secretary of State is authorized to suspend or revoke the license or permit of any person without preliminary hearing upon a showing by his records or other sufficient evidence that such person:
>
> * * *
>
> 3. Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of offenses against laws and ordinances

> regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway:

This section must be viewed in light of related statutory provisions and the rules and regulations promulgated by the Secretary of State.

Section 6-206(a)(2) of the Code authorizes the Secretary to suspend the license of a driver without a preliminary hearing based upon a showing by his records that the individual has been convicted of three traffic violations within a 12-month period "so as to indicate the disrespect for the traffic laws and a disregard for the safety of other persons on the highway" (See: Appendix B). Under Rule 6-206(a)(2), the Secretary may suspend the license of a driver convicted of three violations within a 12-month period, with the length of the suspension dependent upon the number of points the driver has accumulated on those convictions (See: Appendix C). Rule 6-206(a)(3) provides that a "person who has been suspended thrice within a 10 year period shall be revoked". Since this statutory scheme affords a driver an opportunity for a hearing on the merits of each violation on which his suspension is based, the Illinois Statute effects a valid constitutional accommodation between the conflicting interests of the State and the licensee.[1]

---

[1] It should be noted that after recocation under § 6-206(a)(3), Illinois licensees have a right to a hearing pursuant to Chapter 95 1/2, § 2-118, which provides:

> (a) Upon the suspension, revocation or denial of the issuance of a license, permit or registration or certificate of title under this Act of any person the Secretary of State shall immediately notify such person in writing and upon

(Footnote continued on following page)

In *Ratlif v. Lampton*, 32 Cal. 2d 226, 195 P. 2d 792 (1948) the Court noted that in situations where provisions make it mandatory upon the Department to revoke or suspend licenses upon receipt of a record showing that the individual was convicted of specified offenses, "the facts have already been determined in the criminal proceeding" (195 P. 2d 793). Furthermore, in *Cadieux v. Macduff*, 1 App. Div. 2d 360, 150 N.Y.S. 2d

[1] *continued*

his written request shall afford him an opportunity for a hearing as early as practical within 20 dyas after receipt of such request, in either the County of Sangamon or the County of Cook as such person may specify, unless both parties agree that such hearing may be held in some other county.

(b) At any time after the suspension, revocation or denial of a license, permit or registration or certificate of title of any person as hereinbefore referred to, the Secretary of State, in his discretion and without the necessity of a request by such person, may hold such a hearing, upon not less than 10 days notice in writing, in the Counties of Sangamon or Cook or in any other county agreed to by the parties.

(c) Upon any such hearing, the Secretary of State, or his authorized agent may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books and records and may require an examination of such person. Upon any such hearing, the Secretary of State shall either rescind, or, good cause appearing therefore, continue, change or extend the Order of Revocation or suspension, as the case may be.

(d) All hearings shall be held before the Secretary of State or before such persons as may be designated by the Secretary of State and appropriate records of such hearings shall be kept.

(e) The action of the Secretary of State in suspending, revoking or denying any registration, license or permit or certificate of title shall be subject to judicial review in the Circuit Court of Sangamon County or in the Circuit Court of Cook County and the provisions of the "Administrative Review Act", approved May 8, 1945, and all amendments and modifications thereto, and the rules adopted pursuant thereto, are hereby adopted and shall apply to and govern every action for the judicial review of final acts or decisions of the Secretary of State hereunder.

138 (1956) *app. dismd.*, 1 N.Y. 2d 827, 135 N.E. 2d 717 (1956) the Court found that where the Commissioner of Motor Vehicles determined that a motorist's conviction for reckless driving justified the revocation of his license, the fact that the legislature provided that no hearing was necessary did not deprive him of due process, stating:

> * * * Such a procedure does no violence to "due process" because the petitioner has had a court hearing upon his conviction and the statute expressly authorizes a court review of the Commissioner's acts if they are claimed to be arbritary or an improper exercise of discretion, . . . (150 N.Y.S. 2d 140)

In *Bell v. Burson*, 402 U.S. 535, 29 L. Ed. 2d 90 (1971) this Court held that once a driver's license was issued by the State, it was not to be taken away without the procedural due process required by the Fourteenth Amendment (402 U.S. at 535), and that a prior hearing must precede a revocation or suspension of driving privileges where the individual's interest in avoiding the particular state action outweighs the countervailing governmental interest. This Court determined that the sole purpose of the provisions of the law under scrutiny in *Bell* was to provide security for a judgment claimant (402 U.S. at 540). Under such circumstances, the State's interest in protecting the claimant from the possibility of an unrecoverable judgment was insufficient to justify the burden placed upon the licensee where no reasonable possibility of a judgment against him existed (402 U.S. at 542). Therefore, this Court found the provisions unconstitutional. The crucial factor in the *Bell* decision was that prior to the revocation of a license under Georgia's financial responsibility statute, the licensee was not accorded a hearing on the issue of fault or liability for the accident which resulted in the revocation (29 L. Ed. 2d at 96).

The practice of the Illinois Secretary of State conforms to the dictates of *Bell v. Burson*. It should be noted first that the State's interest here, in protecting the public from an unsafe driver with repeated convictions for motor vehicle violations, is much stronger than the State's interest in *Bell*, in protecting the public from a financially irresponsible driver. Secondly, a separate hearing to determine fault is not required here because each time a licensee is convicted of a violation which counts toward his suspension and which results in an assignment of points, the licensee is accorded a full opportunity to be heard on the issue of fault. It is only when the driver has been so convicted that the Secretary is authorized to revoke or suspend. Thus, the hearings that a driver is afforded on his violations are clearly more than adequate to support a revocation or suspension. As this Court noted in *Bell*,

> Clearly, however, the inquiry into fault or liability requisite to afford the licensee due process need not take the form of a full adjudication of the question of liability . . . [W]e hold that procedural due process will be satisfied by an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amount claimed being rendered against the licensee. (29 L. Ed. 2d at 95).

Judged by the requirements of *Bell*, the Illinois procedure clearly affords licensees an adequate opportunity to be heard on the issues underlying suspension or revocation because the question of their liability has already been fully adjudicated.

Subsequent to this Court's decision in *Bell v. Burson*, several jurisdictions have upheld suspension or revocation of driving privileges without a preliminary hearing. In *Cox v. Hjelle*, 207 N.W. 2d 266 (N.D. 1973) the Supreme Court of North Dakota held that a defendant who had been convicted of four speeding offenses within

a two-year period was not denied due process by a license suspension without a further hearing.

> In the case under consideration on this appeal, however, the licensee was not deprived of his rights without a hearing. In each of the cases in which he was charged with a traveling violation, he was given the opportunity of being heard. He deliberately chose not to appear and avail himself of such opportunity. However, having had the opportunity for hearing in each of the four cases, he was not denied due process as guaranteed under the Fourteenth Amendment.

See also: *State v. Sinner*, 207 N.W. 2d 495 (N.D. 1973).

A statute permitting the Department of Highway Safety and Motor Vehicles to revoke a driver's license for five years upon the Department's finding that a driver was a habitual offender was held constitutional by the Supreme Court of Florida in *Zarsky v. State of Florida*, 300 So. 2d 261 (Fla. 1974). See also: *Abraham v. State*, 301 So. 2d 11 (Fla. 1974) *app. dismd.* 420 U.S. 941, 43 L. Ed. 2d 420.

The Supreme Court of Nebraska upheld a statutory scheme very similar to the one involved in the instant case in *Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W. 2d 218 (1972).

In so holding, the Court stated; 195 N.W. 2d at 223:

> We think that in a very real sense the essential facts have been determined in the judicial proceedings in connection with each conviction. In a very real sense the Director acts only ministerially. The result—the revocation—flows from the operation of the statute upon the already judicially determined facts, that is, the series of convictions of traffic offenses. Of these the motorist already has knowledge. Of their effect point-wise he is charged

by law with knowledge just as with any other case of knowledge of the law. These circumstances do, in our opinion, make the procedures applicable to revocation of a driver's license for an accumulation of points for traffic offense conviction clearly distinguishable from revocation under the financial responsibility law as in Bell v. Burson, *supra.*

The court continued, 195 N.W. 2d at 224:

> Under the Nebraska scheme the Director acts ministerially. The likelihood of error is small. The compelling public interest in removing from the highways those drivers whose records demonstrate unsafe driving habits outweighs the need for notice and hearing prior to the order to protect the individual against mistake. In this connection the matter must be viewed not as an isolated case but in the collective aspect, that is, the removal of many such drivers from the highways.

The suspension of a driver's license, without a pre-suspension hearing, under Vermont's Financial Responsibility Act was upheld in *Wright v. Malloy*, 373 F. Supp. 1011 (D. Va. 1974), *aff'd without opinion*, 95 S. Ct. 297, 42 L. Ed. 2d 261 (1974). Vermont's statutory scheme provided a pre-suspension hearing for drivers who were allegedly at fault in an automobile accident but who were not convicted of a motor vehicle violation and for those drivers who were convicted of a motor vehicle violation that did not indicate fault. Only when the driver was convicted of a motor vehicle violation indicating fault for the accident in which he was involved did the statute provide for no independent hearing (373 F. Supp. at 1018). The Court found that such a procedure afforded drivers due process,

> * * * It is reasonable to assume that the legislature felt that a further hearing was unnecessary when the opportunity to contest fault was afforded the driver by the nature of the plea which

> he entered to the charges brought against him. A plea of not guilty would earn such an operator the right to be heard by the court with undoubted procedural and substantive due process rights. On the other hand, a plea of guilty or nolo contendere to the violation indicates that the operator either declines to contest the question of fault or that he indeed was at fault to some degree which he is willing to admit. *Bell* does not require that a hearing be held in all cases in which proof of financial responsibility is sought by the Commissioner but merely that there is a forum where the motorist may have the question of probability of fault determined before he is made to suffer suspension of his license for failing to establish his financial responsibility. (373 F. Supp. at 1018)
>
> * * *
>
> We hold that the procedural due process test laid down in *Bell* is satisfied by the opportunity granted the driver to contest his fault by contesting the violation with which he is charged and that a determination by the defendant Commissioner of Motor Vehicles that there is a reasonable possibility of a judgment being rendered against the licensee may be based upon the fact that the fault of the licensee has been determined by conviction upon the motor vehicle violation with which he was charged. (373 F. Supp. at 1019)

Further, in *Scott v. Hill*, 407 F. Supp. 301 (E.D. Va. 1976) the Court held that a failure to provide the plaintiff with notice of a proposed revocation of his driving privileges did not operate to deprive him of due process where three opportunities for a hearing had been provided on the underlying convictions. Rejecting plaintiff's contention that *Bell v. Burson* required a pre-revocation hearing, the Court declared,

> Nor is this a *Bell v. Burson* case. There the infirmity was that the licensee had been deprived of his operator's license without his ever having an oppor-

tunity for a hearing. Here plaintiff had three opportunities for a hearing on the underlying convictions and, as above noted, the underlying convictions are not void on the basis of any federal right or immunity. Loss of an operator's license is not loss of a liberty. *Ferguson v. Gathright*, 485 F.2d 504, 506 (4th Cir. 1973). As was suggested in *Bell, supra*, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d at 96-97, a State may base an operator's license suspension on the outcome of a civil action for damages brought by the injured party. If this be a permissible procedure it seems equally permissible, so far as federal law is concerned, for Virginia to base its suspension upon *three* criminal drunk driving convictions. (407 F. Supp. at 304).

Similarly, under the Illinois statutory scheme the essential facts supporting the suspension or revocation of the licensee's driving priviliges have been judicially determined in the judicial proceedings had in connection with each conviction. The licensee had an opportunity to appear at each hearing and contest his liability. Under these circumstances, it is respectfully submitted that the Illinois statutory scheme affords drivers due process of law.

Additionally, even assuming that due process would otherwise require a preliminary hearing before suspension or revocation of driving privileges, there are factors involved here which would obviate the need for a hearing prior to revocation. In *Goss v. Lopez*, 419 U.S. 565, 42 L. Ed. 2d 725 (1975), this Court stated that there are recurring situations in which prior notice and hearing cannot be insisted upon. Such a situation was recognized to exist in an expulsion case when the presence of certain students posed a continuing danger to persons or property. Revoking the license of an incompetent driver who endangers the lives of the public is a similar situation.

It is well-settled that agencies can take emergency action, where a danger to the public is present, without prior notice or a preliminary hearing. This Court has frequently upheld such action against attacks based upon deprivation of due process of law.[2] In *Bell v. Burson*, this Court recognized that emergency situations are an exception to the general rule requiring a preliminary hearing prior to suspension or revocation (402 U.S. 542). Although this Court found in *Bell* that failure to comply with a financial responsibility statute was not such an emergency situation, it is submitted that repeated convictions for violation of traffic laws do present an emergency situation sufficient to come within the exception discussed in *Bell v. Burson*.

---

[2] See: *Morton v. Dow*, 525 F. 2d 1302 (10th Cir. 1975) (Administrator may revoke airworthiness certificate in an emergency without a hearing);

FTC v. Dean Foods Co., 384 U.S. 597, 16 L. Ed. 2d 802 (1966) (FTC may seek injunction against a merger pending administrative hearings);

Ewing v. Mytinger and Casselberry, Inc., 339 U.S. 594, 94 L. Ed. 1088 (1950) (drug with misleading labels may be seized pending a hearing).

Fahey v. Mallonee, 332 U.S. 245, 91 L. Ed. 2030 (1947) (conservator may take possession of failing bank prior to hearing);

North American Cold Storage Co. v. City of Chicago, 211 U.S. 306, 53 L. Ed. 195 (1908) (food unfit for human consumption may be summarily seized and destroyed).

Careless or negligent driving on our highways results in numerous serious injuries and deaths each year.[3] Several states have upheld suspensions or revocations of driver's licenses without a prior hearing, finding that a record of frequent driving violations constitutes an emergency situation. In *Broughton v. Warren*, 281 A. 2d

[3] In his concurring opinion in *Perez v. Campbell*, 402 U.S. 637, 29 L. Ed. 2d 233 (1971) Mr. Justice Blackmun pointed out that the "slaughter on the highways of this nation exceeds the death toll of all our wars." (402 U.S. at 657)

[402 US 672]

APPENDIX TO OPINION OF BLACKMUN, J.

MOTOR-VEHICLE DEATHS AND WAR DEATHS

From 1900 through 1969, motor-vehicle deaths in the U. S. totalled nearly 1,800,000. Deaths of U. S. military personnel in all wars are shown below. In making comparisons, it must be kept in mind that nearly everyone is exposed to motor-vehicle accidents but relatively few are exposed to war deaths.

U. S. MILITARY CASUALTIES IN PRINCIPAL WARS

War	Total	Battle	Others*	Nonfatal Wounds
Total	†1,146,000	643,052	†503,200	§1,540,000
Revolutionary War (1775–83)	4,435	4,435	N.A.	6,188
War of 1812 (1812–15)	2,260	2,260	N.A.	4,505
Mexican War (1846–48)	13,283	1,733	11,550	4,152
Civil War (1861–65)				
Union Forces	364,511	140,414	224,097	281,881
Confederate Forces	133,821	74,524	59,297	N.A.
Spanish-American War (1898)	2,446	385	2,061	1,662
World War I (1917–18)	116,708	53,513	63,195	204,002
World War II (1941–45)	407,316	292,131	115,185	670,846
Korean War (1950–53)	54,246	33,629	20,617	103,284
Viet Nam War (1961–69)	47,251	40,028	7,223	262,799

Source: Office of Secretary of Defense.
† Rounded.
* Includes deaths from disease, accidents, etc.
§ Incomplete and rounded. N. A. Not available.
Accident Facts 63, published by the National Safety Council (1970 ed.).
The same publication, page 59, discloses that the annual death toll for motor vehicle accidents in the United States has exceeded 52,000 in each of the last five calendar years. Thus, the *annual* motor vehicle carnage approximates the *total* number of lives lost during the entire Vietnam conflict beginning in 1961.

625 (Del. 1971) the Court upheld a statute authorizing immediate suspension of driving privileges, without a hearing, upon the commission of any offense for which conviction would result in mandatory revocation:

> Little formal proof is required of carnage on the highways. For present purposes the Court takes judicial notice of the fact that men, women and children are seriously injured or die on our highways as a result of manslaughter by automobile, as a result of driving while under the influence of intoxicating liquor or narcotic drug, and so on. Cf. Breithaupt v. Abram, 352 U.S. 432, 77 S.Ct. 408, 1 L.Ed.2d 448 (1957). Certainly there is a governmental interest, a very strong public interest, in promptly removing from the highways persons who engage in such conduct. The suspension of a driver's license, under the kind of statute and proceeding here involved, is not to punish the driver but to protect the public from those who have demonstrated that their driving presents a hazard to life and property. Bungardeanu v. England, 219 A.2d 104 (D.C.Ct.App. 1966). (281 A.2d at 629)

The Supreme Court of Wisconsin, in *Gleason v. Wisconsin Department of Transportation*, 61 Wis. 2d 562, 213 N.W. 2d 74 (1973) found that a precancellation hearing was not required where it had been demonstrated that the licensee's physical condition had resulted in a danger to the public:

> We are of the opinion that the information before the respondent at the time of the issuance of the cancellation order presented an emergency situation well within the pronouncement of *Bell, supra*. When petitioner's driving record disclosed two episodes of unconsciousness within a few months, while driving, and which resulted in automobile collisions, such record presented an emergency situation and

any procedural due process requirements for a pre-cancellation hearing were obviated. (213 N.W. 2d at 79)

In *Cox v. Hjelle, supra*, the Supreme Court of North Dakota found that there was an emergency situation obviating the necessity for a presuspension hearing where the licensee was shown to have been convicted of four speeding offenses within a two-year period. The Court stated:

> The record in the case before us establishes that there were reasonable grounds under the statute for the decision which the Commissioner rendered. The licensee had been convicted four times, after full opportunity for hearing in each case. Where the driving record of the petitioner discloses four convictions involving movement of a vehicle upon the public highways within the preceding two-year period, such driving record constitutes an emergency situation which obviates the necessity for a presuspension hearing. Suspension in such case does not contravene the Due Process Clause of the Fourteenth Amendment of the United States Constitution. State v. Harm, 200 N.W.2d 387 (N.D.1972); State v. Sinner, 207 N.W.2d 495 (N.D.1973). (207 N.W. 2d 270)

Where a licensee's driving record reveals continued convictions for moving violations so as to indicate "a disrespect for the traffic laws" and "a disregard for the safety of other persons on the highway" (§ 6-206(a)(2)), this situation constitutes an emergency which obviates the necessity for a presuspension or a prerevocation hearing. In the instant case plaintiff's driving record is replete with convictions for traffic violations. Under these circumstances, an emergency situation exists bringing the instant case within the exception noted in *Bell v. Burson.*

CONCLUSION

For the foregoing reasons, Appellant respectfully urges this Honorable Court to reverse the judgment of the three-judge district court which permanently enjoined the enforcement of the Illinois statute on the ground that it violates due process of law.

Respectfully submitted,

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
160 North LaSalle Street, Suite 900,
Chicago, Illinois 60601 (793-3500),
Attorney for Appellant.

PAUL J. BARGIEL,
PATRICIA ROSEN,
STEPHEN R. SWOFFORD,
MARY STAFFORD,
Assistant Attorneys General,
160 North LaSalle Street, Suite 800,
Chicago, Illinois 60601 (793-5635),
Of Counsel.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated, *Plaintiff*, v. MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity, *Defendant.*	No. 75 C 1821

Before TONE, Circuit Judge, and McLAREN and McGARR, District Judges.

MEMORANDUM OPINION AND ORDER

McGARR, District Judge. The plaintiff in this suit raises a substantial issue as to the constitutionality of Ill. Rev. Stat. Ch. 95½, § 6-206(a)(3), and seeks to enjoin the enforcement thereof. Accordingly, a three-judge court has been convened pursuant to 28 U.S.C. §§ 2281 and 2284. The following is the opinion of that court.

The plaintiff, Dennis M. Love, seeks to enjoin the defendant, Michael J. Howlett, from revoking the driver's license of the plaintiff and others similarly situated, with-

out a hearing prior to revocation. This practice is alleged to be in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. Plaintiff additionally states a claim under 42 U.S.C. § 1983. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1343, 1331, 2201 and 2202.

The defendant has filed a motion to dismiss supported by material extraneous to the pleadings. This motion will be taken as a motion for summary judgment under Rule 12(b), Fed. R. Civ. P. The plaintiff has filed a cross motion for summary judgment. The parties have briefed the issues and their motions will be considered simultaneously.

The facts in this particular action are as follows. The plaintiff, a truck driver, was issued citations for violations of traffic laws on three occasions pertinent to this suit. Prior to these citations, his license had been suspended for a time on March 17, 1970, and on October 22, 1969. He was convicted on the first citation on September 6, 1974. He was convicted on the second on November 21, 1974. On March 27, 1975, plaintiff was notified by letter that a further conviction would result in loss of his driving privileges. The third citation had been issued to the plaintiff on February 12, 1975, and his subsequent conviction occurred on March 31, 1975.

On June 3, 1975, plaintiff received a notice from the office of the Secretary of State that his license to operate a motor vehicle had been revoked effective June 6, 1975. The revocation was effected pursuant to the statute in issue here, Ill. Rev. Stat. Ch. 95½, § 6-206(a)(3). The reason for revocation stated on the notice was plaintiff's "having been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates disrespect for the traffic laws."

On June 6, 1975, upon application by the plaintiff, this court issued a temporary restraining order against the Secretary of State pending a resolution of the issues presented in the complaint filed June 5, 1975. The order was conditioned on plaintiff's application for a hardship driver's license. Plaintiff applied for such license on June 10, 1975, and was issued such a license on July 25, 1975.

Plaintiff's attack on the constitutionality of the statute has three aspects. The main thrust of the attack is directed to the failure of the statute to provide adequate notice and hearing to affected parties prior to suspension or revocation of their driver's licenses. Additionally, plaintiff challenges the statute as unconstitutionally vague in that it fails to establish adequate guidelines to be followed by the Secretary of State in suspension or revocation of licenses pursuant to its provisions. Lastly, the statute allegedly fails to inform the plaintiff of standards used by the Secretary of State for the suspension and revocation of drivers' licenses.

Illinois Revised Statutes Ch. 95½, § 6-206(a)(3) provides:

> "(a) The Secretary of State is authorized to suspend or revoke the license or permit of any person without preliminary hearing upon a showing by his records or other sufficient evidence that such person:
>
> • • •
>
> 3. Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway. . . ."

It is patent that the statute authorizes the suspension or revocation of a driver's license without any preliminary hearing.

The Supreme Court has stated unequivocally that driver's licenses, once issued, "are not to be taken away without that procedural due process required by the Fourteenth Amendment." *Bell* v. *Burson,* 402 U.S. 535, 539 (1971), citing *Sniadach* v. *Family Finance Corp.,* 395 U.S. 337 (1969), and *Goldberg* v. *Kelly,* 397 U.S. 254 (1970). The question remains as to what procedural due process is required in the instant case.

The defendant contends that this case is distinguishable from *Bell* v. *Burson, supra.* In *Bell* v. *Burson,* the State of Georgia suspended the driver's license of an uninsured motorist who was involved in an accident because of his failure to meet the State's financial responsibility requirement. No hearing was accorded the petitioner on the issue of whether or not he was liable for any damages as a result of the accident. The State's interest in protecting a claimant from the possibility of an unrecoverable judgment was held to be insufficient to justify depriving its citizens their right to due process, in that case defined as the right to a hearing on the issue of fault.

In the instant suit, it is argued, there is no determination of fault made prior to hearing. The only factors entering into the Secretary's decision are the number of convictions on a driver's record, each conviction obtained after opportunity was afforded plaintiff to contest same. This argument is based on the regulations promulgated by the Secretary, which provide that:

> "A person repeatedly involved in collisions or convictions to a degree which indicates the lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle, or whose record indicates disrespect for traffic laws and the safety of other persons on the highway, and who has accumulated sufficient points to warrant a second suspension within a 5-year period, may either be suspended or revoked by the Secretary of State, based on the number of points[1] in his record. A person who has been suspended thrice in a ten-year period shall be revoked."

Defendant maintains that the action of the Secretary is automatic under these guidelines and that a hearing is unnecessary to determine fault. The only purpose to be served by a hearing would be the authentication of the record or of the identity of the driver.

Assuming, as defendant suggests, that the plaintiff had adequate time to contest the authenticity of his record, he has still been denied procedural due process. The statute allows the Secretary a great deal of discretion in taking the action he deems necessary to protect the public from unsafe drivers. Furthermore, neither the statute nor the regulation provides that suspension or revocation of a license follows automatically from conviction of a given number of traffic offenses of certain types. The statute makes suspension or revocation dependent on a determination of whether the driver's repeated involvement in collisions or conviction of offenses indicates lack of ability to use due care or disrespect for the traffic laws and the safety of others. The regulation makes suspension or revocation dependent *both* on such a determination *and* the accumulation of a given number of points, and even then the Secretary "may" but is not required to suspend or

---

1. A system of assigning points to various violations has been prescribed by the Secretary in the regulations.

revoke the driver's license. Only when a driver has been suspended thrice in a ten-year period is the Secretary's action made mandatory.[2] Apparently in practice the accumulation of points is the only fact which is considered in determining whether to suspend or revoke, but neither the statute nor the regulation sanctions the disregard of the conditions of lack of ability to use due care or disrespect for traffic laws and the safety of others. So long, at least, as Illinois law makes a determination of the existence of such lack of ability or disregard a condition to revocation or suspension, a licensee must be given a hearing on those issues before his license can be suspended or revoked.

The defendant argues further that *Bell* v. *Burson* is distinguishable in that the governmental interest protected by the statute in issue in that case was inferior to that in the instant case. In the instant case, the state's interest is "the protection of the public health and safety on its highways." We agree with our brothers in the Western District of Pennsylvania that this "legislation is an intelligent and commendable effort to diminish the carnage on our highways by focusing attention on the most common cause of accidents, the careless and code-violating driver." *Reese* v. *Kassab,* 334 F. Supp. 744 (1971). However, we also agree with their ultimate conclusion that in pursuing this interest the state must also accommodate the individual's right to procedural due process."

---

2. In the instant case, had plaintiff's license been suspended instead of revoked, he would have then been subject to the mandatory revocation provision. Since a suspension requires the same due process safeguards as does a revocation, the defendant's elimination of a step in the revocation process is immaterial to the ultimate determination of the issues in this case.

Finally, we disagree with the defendant's argument that this is an "emergency situation" specifically excepted from the holding in *Bell* v. *Burson.* As an indication that this is not such an emergency situation, we point out that in at least one situation where suspension or revocation is allowed, the state furnishes a hearing before taking such action. Ill. Rev. Stat. Ch. 95½ § 6-206(a)(17). Furthermore, under Ill. Rev. Stat. Ch. 95½ § 6-205, which mandates revocation for certain offenses, such as manslaughter or driving while intoxicated, the revocation is effected only after conviction of the underlying offense.[3] A fault determination being the only distinguishing characteristic of § 6-205, it follows that, in view of the state's regulatory scheme, no emergency situation exists in this case.

In further contravention of the defendant's argument that an "emergency situation" exists is the length of time involved in the instant case between plaintiff's final conviction and his ultimate revocation. Even taking the defendant's position that the conviction was not finalized until 30 days had transpired, a period of almost a month elapsed before plaintiff was sent his notice of revocation. This period of time, while not extreme, affords ample opportunity for a hearing.

We therefore conclude that the practice of the Secretary of State whereby operator's licenses are suspended or revoked under Chapter 95½ § 6-206(a)(3) of the Illinois

---

3. The counterargument of defendant that a hearing on the issue of fault is necessary before mandatory revo-

Revised Statutes is unconstitutional by virtue of its failure to provide the affected party notice and adequate opportunity to be heard.

In view of our holding on the issue of procedural due process, we need not reach the issue of the substantive unconstitutionality of the Act in question.

Accordingly, plaintiff's motion for summary judgment is granted as to Count I of the complaint. Count II is rendered moot by this decision.

ENTER:

/s/ PHILIP W. TONE
Philip W. Tone, Judge
United States Court of Appeals

/s/ RICHARD W. McLAREN
Richard W. McLaren, Judge
United States District Court

/s/ FRANK J. McGARR
Frank J. McGarr, Judge
United States District Court

DATED: January 20, 1976

---

cation under § 6-205, whereas no fault determination need be made under § 6-206(a)(3), has been discussed previously.

APPENDIX B

Illinois Revised Statutes 1975, Chapter 95½, Section 6-206, provides:

6–206. § 6–206. Discretionary authority to suspend or revoke license or permit—Right to a hearing. (a) The Secretary of State is authorized to suspend or revoke the license or permit of any person without preliminary hearing upon a showing by his records or other sufficient evidence that such person:

1. Has committed an offense for which mandatory revocation of license or permit is required upon conviction;

2. Has been convicted of not less than 3 offenses against traffic regulations governing the movement of vehicles with the exception of those offenses excluded under the provisions of Section 6–204(2), committed within any 12 month period so as to indicate the disrespect for traffic laws and a disregard for the safety of other persons on the highways; conviction upon 3 charges of violation of Section 11–601 of this Act committed within a period of 12 months shall be deemed grounds for the revocation or suspension of a license or permit under this Section, provided that no such revocation or suspension shall be entered more than 6 months subsequent to the date of conviction of the 3rd offense;

3. Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway;

4. Has by unlawful operation of a motor vehicle caused or contributed to an accident resulting in death or injury to any person, except that any action taken by the Secretary of State under the provisions of this sub-section shall be confined to a period of 6 months after a conviction of the unlawful operation of a violation of a law or ordinance regulating the movement of traffic, which violation is related to such accident, or to a period of not more than one year subsequent to the date of said accident, whichever period terminates later;

5. Has permitted an unlawful or fraudulent use of such license or permit;

6. Has been lawfully convicted of an offense in another State which if committed within this State would be grounds for suspension or revocation;

7. Has refused or failed to submit to an examination provided for by Section 6–207 of this Act or has failed to pass such examination;

8. Is ineligible for such license or permit under the provisions of Section 6–103 of this Act;

9. Has made a false statement or knowingly concealed a material fact in any application for a license or permit;

10. Has displayed or represented as his own any license or permit not issued to him;

11. Has operated a motor vehicle upon a highway of this State when his drivers license or permit or privilege so to do or privilege to obtain a license or permit under this Act was revoked or suspended unless the operation was authorized by a restricted driving permit issued pursuant to this Act;

12. Has submitted to an examination or has obtained the services of another person to submit to an examination for the purpose of obtaining a drivers license or permit for some other person;

13. Has operated a motor vehicle upon a highway of this State when his drivers license was invalid under the provisions of Section 6–110 of this

Act. Provided that for the first such offense the Secretary of State may suspend such license or permit not more than 60 days, for the second such offense not more than 90 days, and for the third such offense not more than 1 year;

14. Has been convicted of any violation of Section 6–301;

15. Has violated Section 21–2 of the Criminal Code of 1961 [1] relating to criminal trespass to vehicles in which case, the suspension shall be for one year;

16. Has violated Section 11–204 of this Act relating to fleeing from a police officer;

17. Has refused to submit to a test as required under Section 11–501.1 of this Act and such person has not sought a hearing as provided for in Section 11–501 of this Act;

18. Has, since issuance of a license or permit, been adjudged to be afflicted with or suffering from any mental disability or disease.

(b) If any conviction forming the basis of a suspension or revocation authorized hereunder is appealed, the Secretary of State may rescind or withhold the entry of the order of suspension or revocation, as the case may be, provided that certified copy of a supersedeas or other stay order is filed with the Secretary of State. If such conviction is affirmed on appeal, the date of the conviction shall relate back to the time the original judgment of conviction was entered and the 6 month limitation hereinabove prescribed shall not apply.

(c) 1. Upon suspending or revoking the license or permit of any person as authorized in this Section, the Secretary of State shall immediately notify such person in writing of the order revoking or suspending the license or permit. Such notice to be deposited in the United States mail, postage prepaid, to the last known address of such person.

2. If the Secretary of State suspends or revokes the license of a person under sub-paragraph 2 of paragraph (a) of this Section, a person's license to drive a commercial vehicle only as an occupation shall not be revoked or suspended unless 5 offenses were committed, at least 2 of which occurred while operating a commercial vehicle in connection with his regular occupation. Within 25 days after the mailing of a notice of suspension or revocation by the Secretary of State, any such driver may submit an affidavit on forms to be provided by the Secretary of State setting forth the facts of his employment as a driver of a commercial vehicle. The affidavit shall also state the number of offenses committed while driving a commercial vehicle in connection with his regular employment or occupation. The affidavit shall be accompanied by his driver's license which shall be suspended by the Secretary of State who shall thereupon send to said driver a permit to drive a commercial vehicle in his regular occupation. Unless such affidavit is properly completed by the driver and received by the Secretary of State within such 25 day period, such driver's license to drive any motor vehicle shall be revoked or suspended as set forth in the notice that was mailed pursuant to subparagraph 2 of paragraph (c) of this Section. The Secretary may revoke or suspend the license of such person to drive any vehicle other than a commercial vehicle in connection with his regular occupation upon notice of conviction of not less than 3 offenses against traffic regulations governing the movement of vehicles with the exception of those offenses excluded under Section 6–204(2), committed within any 12 month period so as to indicate the disrespect for traffic laws and a disregard for the safety of other persons on the highways.

In lieu of the affidavit provided for above, the driver may request a hearing pursuant to Section 2–118 of this Act.

Any person who falsely states any fact in the affidavit required herein shall be guilty of perjury under Section 6–302 of this Act and upon conviction thereof shall have his driver's license revoked without further rights under this sub-paragraph 2.

3. At the conclusion of a hearing pursuant to Section 2–118, the Secretary of State shall either rescind or continue an order of revocation or shall substitute an order of suspension therefor; or, good cause appearing therefor, rescind, continue, change or extend his order of suspension. If the Secretary of State does not rescind his order, he may upon application therefor, to relieve undue hardship, issue a restricted driving permit granting the privilege of driving a motor vehicle between the residence and the place of employment of such person or within other proper limits. In each case the Secretary may issue such restricted driving permit for such period as he deems appropriate, except that such permit shall expire within one year from the date of issuance. A restricted driving permit issued hereunder shall be subject to cancellation, revocation and suspension by the Secretary of State in like manner and for like cause as a drivers license issued hereunder may be cancelled, revoked or suspended; except that a conviction upon one or more offenses against laws or ordinances regulating the movement of traffic shall be deemed sufficient cause for the revocation or suspension of a restricted driving permit.

(d) This Section is subject to the provisions of the Drivers License Compact.[2]

Amended by P.A. 77–2739, § 1, eff. Oct. 1, 1972; P.A. 78–663, § 1, eff. Jan. 1, 1974.

[1] Chapter 38, § 21–2.
[2] Chapter 95½, § 6–700 et seq.

APPENDIX C

Rule 6-206 of the Rules and Regulations under the Illinois Vehicle Code, in relevant part provides:

RULE 6-206(a) — Discretionary authority to suspend or revoke a license or permit.

The Secretary of State is authorized to exercise discretionary authority to suspend or revoke driving privileges and the evidence thereof without a preliminary hearing, or to decline to suspend or revoke such driving privileges. In making a determination of the action to be taken, the Secretary of State shall take into consideration the severity of the offense and conviction, the number of offenses and convictions, and prior suspensions or revocations on the abstract of the driver's record. The Secretary may also take into consideration the points accumulated by the driver and noted on his driving record.

For the purpose of this Rule and its companion rules, a conviction is the final adjudication of "guilty" by a court of competent jurisdiction, either after a bench trial, trial by jury, plea of guilty, order of forfeiture, or default, as reported to the Secretary of State, and the Secretary of State is not authorized to look behind the conviction.

The provisions of this Rule and its companion rules are subject to the provisions of the Drivers License Compact.

Upon the suspension or revocation of a license, the affected driver may make a written request to the Secretary of State for an administrative hearing pursuant to Section 2-118 of the CODE, and any final order resulting therefrom shall be subject to judicial review.

The procedures to be followed shall be identical for those provided under Rule 7-101 [Administration of Hearings] and shall assure the affected driver of his Constitutional rights to due process of law and equal protection under the law.

Attached hereto, made a part hereof, is the following:

Point system promulgated by the Secretary of State to Rule 6-204 [not reproduced].

RULE 6-206(a)1 — Offenses where mandatory revocation is possible.

When a driver has committed an offense for which mandatory revocation of license or permit is required upon conviction, the Secretary may either suspend or revoke said license or permit.

RULE 6-206(a)2 — 3 traffic offenses within 12 months.

A person who has been convicted of three (3) or more offenses against traffic regulations, governing the movement of vehicles, with the exception of those offenses excluded under provisions of Section 6-204(2) and whose violations have occurred within a twelve (12) month period may be suspended as follows:

Number of Points	*Action*
20 to 44	Suspension up to 2 months
45 to 74	Suspension up to 3 months
75 to 89	Suspension up to 6 months
90 to 99	Suspension up to 9 months
100 to 109	Suspension up to 12 months
Over 110	Revocation for not less than 12 months.

RULE 6-206(a)3 — Repeated convictions or collisions.

A person repeatedly involved in collisions or convictions to a degree which indicates the lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle, or whose record indicates disrespect for traffic laws and the safety of other persons on the highway, and who has accumulated sufficient points to warrant a second suspension within a 5 year period, may either be suspended or revoked by the Secretary of State, based upon the number of points in his record. A person who has been suspended thrice within a 10 year period shall be revoked.

Supreme Court, U. S.
FILED
JAN 19 1977
MICHAEL RODAK, JR., CLERK

No. 75-1513

In the Supreme Court of the United States

OCTOBER TERM, 1975

ALAN J. DIXON, Secretary of State of Illinois,
Appellant,

vs.

DENNIS N. LOVE,
Appellee.

Appeal From The United States District Court For The Northern District Of Illinois, Eastern Division

BRIEF FOR APPELLEE

ALAN M. FREEDMAN
RICHARD J. HESS
ALLEN L. RAY
Legal Assistance Foundation of Chicago
Mid-South Law Office
4655 South Michigan Avenue
Chicago, Illinois 60653
(312) 538-0733

JAMES O. LATTURNER
JERROLD OPPENHEIM
Legal Assistance Foundation of Chicago
Uptown Legal Services
4753 North Broadway
Chicago, Illinois 60640
(312) 769-1015
Attorneys for Appellee

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

INDEX

PAGE

Question Presented 1

Statement of the Case 2

Summary of Argument 3

Argument 11

I. Due Process Requires Some Form of Prior Hearing Before The Secretary May Exercise Discretionary Powers to Deprive a Person of a Protected Interest, Absent Emergency Circumstances 11

A. The Secretary's Revocation of Mr. Love's License Was Made Pursuant To Discretionary Authority 15

B. An Emergency Situation Does Not Exist 20

1. Mr. Love Was Specifically Not Charged With Being a Dangerous Driver or With Having a Disregard For the Safety of Other Persons on the Highway 21

2. The Statute Is Neither Narrowly Drawn Nor Drawn With Sufficient Standards To Determine When Emergency Action Is Necessary and Justified 22

3. There Is No Special Need For Prompt Action Because Mr. Love's License Revocation Was Based On Alleged Activities That Took Place Over a Period of Seven Years 24

PAGE

4. The Secretary Did Not Treat the Situation As An Emergency 26

C. The Due Process Hearing Requirement Is Not Met By the Proceedings In Traffic Court 27

II. What Process Is Due 33

A. The Interest of the Licensee in Having Pre-Revocation Procedures That Meet The Requirements Of Due Process 34

B. The Risk of Erroneous Deprivation With No Prior Procedures and The Probable Value Of Having Some Procedural Safeguards 37

C. The Interest Of The State In Revoking Licenses Without Any Of The Requirements Of Due Process 43

III. Statutes And Procedures Employed By Other States Demonstrate That Workable Alternatives Exist Which Protect Governmental Interests And Provide Adequate Procedural Safeguards 44

Conclusion 52

Appendix A ..... App. 1

Appendix B ..... App. 2

Appendix C ..... App. 3

Appendix D ..... App. 5

Appendix E ..... App. 6

Appendix F ..... App. 7

Appendix G ..... App. 14

AUTHORITIES CITED

Cases

PAGE

Arnett v. Kennedy, 416 U.S. 134, 40 L.Ed.2d 15 (1974) 14, 36, 37, 43

Bell v. Burson, 402 U.S. 535, 29 L.Ed.2d 90 (1971) 4, 12, 20, 30, 34, 35

Board of Regents v. Roth, 408 U.S. 564, 33 L.Ed.2d 548 (1972) 5, 13, 20, 34

Boddie v. Connecticut, 401 U.S. 371, 28 L.Ed.2d 113 (1971) 13, 20, 34

Cicchetti v. Lucey, 377 F.Supp. 215 (D. Mass. 1974) 29

Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594, 96 L.Ed. 1078 (1950) 25

F.T.C. v. Dean's Food Co., 384 U.S. 597, 16 L.Ed.2d 802 (1966) 25

Fahey v. Mallonee, 332 U.S. 245, 91 L.Ed. 2030 (1947) 24

Ferguson v. Gathright, 485 F.2d 504 (4th Cir. 1973) 33

Fuentes v. Shevin, 407 U.S. 67, 32 L.Ed.2d 556 (1972) 8, 13, 20, 22, 34

Gagnon v. Scarpelli, 411 U.S. 778, 46 L.Ed.2d 656 (1973) 14

Goldberg v. Kelly, 397 U.S. 254, 25 L.Ed.2d 287 (1970) 5, 13, 14

Goss v. Lopez, 419 U.S. 565, 42 L.Ed.2d 725 (1975) 5, 12, 18, 33

Horodner v. Fisher, 382 N.Y.S. 2d 28, appeal dismissed ..... U.S. ....., 45 L.W. 3225 (1976) 32

PAGE

Jones v. Penny, 387 F.Supp. 383 (D.N.C. 1974) 27, 29

Kentucky v. Thomas, 467 S.W.2d 335 (Ky. 1971) 29

Langres v. Green, 283 U.S. 531, 75 L.Ed. 520 (1931) 17

Mathews v. Eldridge, 424 U.S. 319, 47 L.Ed.2d 18 (1976) 5, 13, 14, 33, 34, 36, 43

Morrissey v. Brewer, 408 U.S. 471, 33 L.Ed.2d 484 (1972) 13, 14, 33

Mullane v. Central Hanover Tr. Co., 339 U.S. 306, 94 L.Ed. 865 (1950) 12

North American Storage Co. v. Chicago, 211 U.S. 306, 53 L.Ed. 195 (1908) 24

Nusberger v. Wisconsin Division of Motor Vehicles, 352 F.Supp. 515 (W.D. Wisc. 1973) 29

Reese v. Kassab, 334 F.Supp. 744 (W.D.Pa. 1971) 15

Scott v. Hill, 407 F.Supp. 301 (E.D.Va. 1976) 32

Sniadach v. Family Finance Corp., 395 U.S. 337, 23 L.Ed.2d 349 (1969) 8, 22

The Styria v. Morgan, 186 U.S. 1, 46 L.Ed. 1027 (1902) 17

Warner v. Trombetta, 348 F.Supp. 1068 (M.D.Pa., 1972), aff'd., 410 U.S. 919 (1973) 15

West Virginia State Board of Education v. Barnette, 319 U.S. 624, 637, 87 L.Ed. 1628 (1943) 12

Wolff v. McDonnell, 418 U.S. 539, 41 L.Ed.2d 935 (1974) 11, 14

Wright v. Malloy, 373 F.Supp. 1011 (Dist.Ver., 1974), aff'd, mem. 419 U.S. 987, 42 L.Ed.2d 261 (1974) 29, 30, 31

PAGE

United States Constitution

XIV Amendment 2, 13

Statutes

Cal. Veh. Code, Sec. 138-2 41

Cal. Veh. Code, Sec. 13950 48

Cal. Veh. Code, Sec. 14100 48

Colo. Rev. Stat., Sec. 42-2-123 48

Ill. Rev. Stat. ch. 95½ Sec. 2-118 .....35, 48

Ill. Rev. Stat. ch. 95½ Sec. 6-103 .....23, 42

Ill. Rev. Stat. ch. 95½ Sec. 6-204 31

Ill. Rev. Stat. ch. 95½ Sec. 6-205 .....3, 7, 16, 18, 31, 32

Ill. Rev. Stat. ch 95½ Sec. 6-206 .....*passim*

Ill. Rev. Stat. ch. 95½ Sec. 6-301 23

Ill. Rev. Stat. ch. 95½ Sec. 11-204 42

Iowa Code, Sec. 321.210 48

Ky. Rev. Stat., Sec. 186.570 50

Md. Ann. Code Art. 66½ 6-206 45

Mich. Comp. Laws, Sec. 257.320 49

N.D. Cent. Code, Sec. 39-06-32 49

Ohio Rev. Code Ann., Sec. 4507.40 47

S.D. Compiled Laws Ann., Sec. 32-12-49 48

Tex. Rev. Civ. Stat. Art. 6687 47

Va. Code, Sec. 46.1-321(b) 32

Va. Code, Sec. 46.1-387 .....32, 33, 49

PAGE

Va. Code, Sec. 46.1-430 49

Va. Code, Sec. 46.1-431 50

Va. Code, Sec. 46.1-433 50

Wash. Rev. Code, Sec. 46.20.291 51

Wash. Rev. Code, Sec. 46.20.322 51

Wyo. Stat., Sec. 9.276.19 46

Wyo. Stat., Sec. 9.276.33 46

Wyo. Stat., Sec. 31.276.26 46

Regulations

Rule 6-206 *et seq.* of Rules and Regulations issued by the Secretary of State, State of Illinois ..... *passim*

State of Kentucky, Bureau of Vehicles, Regulation No. 4 50

State of Kentucky, Bureau of Vehicles, Regulation No. 9 50

State of Washington, unnumbered internal administrative regulations 51

Treatise

Black's Law Dictionary, Rev. 4th Ed. (1968) 24

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1513

ALAN J. DIXON, Secretary of State of Illinois,

Appellant,

vs.

DENNIS N. LOVE,

Appellee.

Appeal From The United States District Court For The Northern District Of Illinois, Eastern Division

BRIEF FOR APPELLEE

QUESTION PRESENTED

Whether Section 6-206(a)(3) of the Illinois Motor Vehicle Code which gives the Illinois Secretary of State "Discretionary authority to suspend or revoke [a driver's] license . . . without preliminary hearing" violates due process of law by failing to provide some form of prior procedural safeguards?

STATEMENT OF THE CASE

The Secretary of State inadequately summarized the holding of the district court in his Statement of the Case. A full summary of the decision follows.

Dennis Love's driver's license was revoked pursuant to Ill. Rev. Stat., Ch. 95½, Sec. 6-206 which authorizes the suspension or revocation of a license without preliminary hearing. Such licenses are protected by the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

The Secretary argued that revocation was automatic and a pre-termination hearing was unnecessary because the only factors entering into the decision are the number of convictions on a driver's record and each conviction was preceded by a hearing in traffic court. (App. at 19).

The district court rejected this argument on the ground that the statute allows the Secretary "a great deal of discretion" in taking action and therefore the suspension or revocation of the license does not follow automatically from conviction of a given number of traffic offenses. (App. at 20). The court noted:

> The statute makes suspension or revocation dependent on a determination of whether the driver's repeated involvement in collisions or conviction of offenses indicates lack of ability to use due care or disrespect for the traffic laws and the safety of others. The regulation makes suspension or revocation dependent *both* on such a determination *and* the accumulation of a given number of points, and even then the Secretary "may" but is not required to suspend or revoke the driver's license. (App. at 20).

It then held:

> So long, at least, as Illinois law makes a determination of the existence of such lack of ability or disregard a condition to revocation or suspension, a licensee must be given a hearing on those issues before his license can be suspended or revoked. (App. at 20).

The Secretary's argument that an "emergency situation" existed was noted and rejected after a comparison with Ill. Rev. Stat., Ch. 95½, Sec. 6-205, which mandates revocation for certain offenses such as manslaughter or driving while intoxicated. (App. at 21). The court also stated:

> In further contravention of the defendant's argument that an "emergency situation" exists is the length of time involved in the instant case between plaintiff's final conviction and his ultimate revocation. (App. at 21).

The statute was held unconstitutional:

> by virtue of its failure to provide the affected party notice and adequate opportunity to be heard. (App. at 22).

SUMMARY OF ARGUMENT

On June 3, 1975, Dennis Love received a notice from the Secretary of State that his driver's license was revoked effective June 6, 1975, pursuant to Ill. Rev. Stat., Ch. 95½, § 6-206(a)(3). The notice simply stated that the action had been taken as a result of:

> Your having been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates disrespect for the traffic laws. (App. at 13.)

The Secretary contends that the alleged ground on which the revocation was based was three suspensions within a ten-year period. Brief for Appellant at 6. Mr. Love's driving record, however, shows only two suspensions, both in 1969. (App. at 10). The Secretary though, goes on to argue

that at the time of the revocation there were grounds for the third suspension pursuant to § 6-206(a)(2) [1] and that he had merely not taken the intermediate step of making the suspension prior to invoking the revocation. Brief for Appellant at 6. The question then becomes whether grounds existed for the total suspension of Mr. Love's license under § 6-206(a)(2) and, therefore, for the total revocation under § 6-206(a)(3). In fact, such grounds did not exist. Section 6-206(a)(2) gives discretionary authority to the Secretary to suspend the driver's license of a person who has been convicted of three moving violations within a 12-month period. But, this section is specifically qualified by Section 6-206(c)(2) which provides that a person's license to drive a commercial vehicle shall not be revoked or suspended unless five offenses were committed within a 12-month period.

Mr. Love is a truck driver. He needs a license to drive a commercial vehicle in his occupation. Within the year prior to the revocation, Mr. Love had not been charged with five violations. He specifically came within the provisions of subsection (c)(2). Thus the Secretary did not have the authority to revoke Mr. Love's license to drive a commercial vehicle.

Section 6-206 specifically provides for revocation and suspension "without preliminary hearing." There was no statutory or administrative means to challenge the Secretary's decision to revoke prior to the effective date. The revocation of a driver's license without notice or a preliminary hearing violates due process. *Bell* v. *Burson*, 402 U.S. 535, 29 L.Ed.2d 90 (1971).

[1] Hereinafter all citations or references to section numbers without a full citation refer to the Illinois Motor Vehicle Code, Rev. Stat., Ch. 95½.

The basic purpose underlying the Due Process Clause is to avoid arbitrary, capricious, mistaken or authoritarian deprivations of significant interests. It requires the opportunity to be heard "at a meaningful time and in a meaningful manner." *Goldberg* v. *Kelly*, 397 U.S. 254, 267, 25 L.Ed.2d 287 (1970). At a minimum this means that action must be preceded by adequate notice and some form of *prior* hearing. *Board of Regents* v. *Roth*, 408 U.S. 564, 33 L.Ed.2d 548 (1972); *Mathews* v. *Eldridge*, 424 U.S. 319, 47 L.Ed.2d 18 (1976). The individual must be allowed to "tell his side of the story in order to make sure that an injustice is not done." *Goss* v. *Lopez*, 419 U.S. 565, 580, 42 L.Ed.2d 725 (1975).

Mr. Love's license was revoked. This was the most severe penalty that the Secretary could impose. Before taking any action the Secretary had to determine if grounds therefor existed. Mr. Love was charged with "disrespect for the traffic laws." Disrespect cannot be determined by the number of traffic tickets alone. At the very least, disrespect is a function of the relationship between the number of violations to the number of miles driven. In order for the question of disrespect to be accurately determined by the Secretary, he must hear Mr. Love's side.

Even if the Secretary was authorized to revoke, he still had the power to "decline to . . . revoke" under Rule 6-206 (a) promulgated by the Secretary [2] or to "substitute an order of suspension therefor . . .". Section 6-206(c)(3). A complete review of Mr. Love's driving record shows that the determination of disrespect is questionable and the

[2] Rules (administrative regulations) are numbered parallel to the statutory provisions to which they pertain. Thus, Rule 6-206(a) is the rule promulgated for the enforcement of Section 6-206(a) of the Illinois Motor Vehicle Code. Rule 6-206 is reproduced as Appendix C in the Brief for Appellants.

infliction of the maximum penalty is unjustified. Suspensions and revocations are not based on the absolute number of traffic violations, but on how they happen to be grouped. To be subject to consideration for suspension or revocation based upon the number of traffic tickets, a licensee must have been convicted for not less than three offenses committed within any twelve-month period. Mr. Love had had a driver's license for seven years prior to the revocation. During that time he was convicted of only six traffic offenses that count toward suspensions. Unfortunately, he grouped these six offenses into two groups of three, each group committed within a twelve-month period. During that same seven-year period it would have been possible for another driver to have been convicted of 14 traffic violations and, so long as no three were committed within any twelve-month period, not be subject to any suspension or revocation.

Under the present statutory scheme, there are no prior protections whatsoever. There is no way for a licensee to correct clerical error prior to revocation. There is no way for a licensee to obtain a restricted driving permit authorized by § 6-206(c)(3) "to relieve undue hardship" prior to the onset of such a hardship. There is no way for a licensee to correct misapplications of the statute to particular factual circumstances prior to the Secretary's action. There is no way for the licensee to present mitigating circumstances pertaining to both the decision to revoke and the severity of the penalty prior to the decisions. The interest of a licensee in obtaining even minimal rudiments of due process is indeed great.

The Secretary recognizes that due process must be applied to this case and concedes that there must be a hearing "at a meaningful time." Brief of Appellant at 10. He

then claims that due process does not require a hearing before revocation because (a) his action was mandatory and ministerial, or even if there was discretion exercised, (b) the emergency nature of the situation required prompt action. Alternatively, the Secretary argues that pre-revocation due process was afforded in traffic court. The Secretary's assertions are incorrect.

2. The Secretary's revocation of Mr. Love's license was made pursuant to the Secretary's discretionary authority. Mr. Love's license revocation was effected pursuant to §6-206, which is explicitly headed "Discretionary Authority to Suspend or Revoke License or Permit—Right to a Hearing." Further, Rule 6-206 provides that

> The Secretary of State is authorized to exercise discretionary authority to suspend or revoke driving privileges and the evidence thereof without a preliminary hearing, or to decline to suspend or revoke such driving privileges.

The discretionary nature of a suspension or revocation pursuant to §6-206 is further underscored by a comparison of that section with the preceding section, 6-205, which is labeled "Mandatory Revocation of License or Permit—Hardship Cases" and provides: ". . . the Secretary of State shall forthwith revoke the license or permit of any driver upon receiving a report of such driver's conviction of any of the following offenses: . . .". Indeed, under §6-205, at the end of the traffic court hearing, the license is physically surrendered to the Clerk of the Court to be forwarded to the Secretary. The Illinois legislature clearly understood the difference between discretionary and mandatory authority when it enacted these two consecutive sections.

Finally, because the Secretary considers the procedure in question to be totally mandatory and ministerial, he

maintains there is no need for any pre-termination hearing or procedures because there is no way in which such a hearing could change the result. Obviously, under this theory, there is no way that a post-termination hearing could change the result either. Yet, §6-206 provides for an elaborate, full evidentiary post-termination hearing complete with subpoena power and examination of witnesses under oath. But during the pendency of this post-termination hearing the revocation remains in full force and effect.

3. The Secretary alternatively claims that an "emergency" situation existed which obviated the necessity for a pre-suspension or pre-revocation hearing. (Brief of Appellant at 24). The emergency situation claimed is the protection of the general welfare by the removal of dangerous drivers from the highways. This contention is frivolous.

Mr. Love was specifically not charged with being a dangerous driver or with having a disregard for the safety of other persons on the highways as authorized by §6-206 (a)(3). He was only charged with a disrespect for the traffic laws. To invoke the limited emergency exception to the Due Process Clause, it must be shown that the emergency "was necessary and justified in the particular instance." *Fuentes* v. *Shevin,* 407 U.S. 67, 32 L.Ed.2d 556 (1972). On the facts, the Secretary has not met this requirement.

In order for a summary action to meet the extraordinary situation requirement, it must have been taken pursuant to the standards of the statute narrowly drawn to meet only unusual conditions. *Sniadach* v. *Family Finance Corp.,* 395 U.S. 337, 339, 23 L.Ed.2d 349 (1969). Section 6-206 authorizes discretionary suspension or revocation of a driver's license "without preliminary hearing" for

20 reasons including situations where an emergency could not possibly exist and where there is no possible inference from the ground of revocation that the licensee is a dangerous driver. The statute is neither narrowly drawn nor drawn with sufficient standards to determine when emergency action is necessary and justified.

There is no special need for prompt action where Mr. Love's license revocation was based on activities that took place over a period of seven years. The traffic violation giving rise to Mr. Love's revocation was his sixth conviction in seven years. There is nothing magical about the sixth conviction that creates an emergency situation that was not present at the time of the fifth conviction. Indeed, the revocation is actually based on how traffic violations are grouped and not their absolute number. Thus, another driver could have had 14 traffic violations within the same seven year period and not be subject to any suspension or revocation, let alone an emergency revocation.

If an emergency actually existed, it would be expected that the Secretary would treat the situation as an emergency. However, after the last conviction, the Secretary waited over two months before acting. The Secretary, judged by his own actions in this case, did not treat the situation as an emergency. An after-the-fact claim of an emergency cannot justify a denial of due process.

4. The due process hearing requirement is not met by the proceedings in traffic court. In claiming that it is, the Secretary again assumes that revocation is mandatory and ministerial rather than discretionary. As we have shown above, the revocation is discretionary. A traffic court determines guilt or innocence only as to a particular ticket. The Secretary, on the other hand, must make a determination of whether the driver's overall record of traffic of-

fenses indicates lack of ability to use due care or disrespect for the traffic laws and the safety of others. These considerations are not before the traffic court judge. In addition, the Secretary must also determine the appropriate punishment, i.e., the length of a suspension and the terms and conditions of a revocation or suspension. None of these considerations are to be found within a finding of guilty by a traffic court on a traffic citation.

5. Reconciling due process and highway safety is not difficult. Other states recognize the serious consequences that flow from license suspension or revocation and offer meaningful opportunities for licensees to contest or otherwise respond prior to a proposed suspension or revocation. A wide range of methods have been adopted by other states to comport with the dictates of due process. Some provide a full evidentiary hearing prior to suspension or revocation before either the administrative agency or a court. Others require the giving of a detailed notice of the grounds and the evidence relied upon for the proposed action, a sufficient amount of time prior to the effective date, and allow the licensee to request a hearing, with the suspension or revocation stayed until the final determination at the hearing.

Mr. Love prays that the present Illinois statute and administrative procedures be declared unconstitutional and that the State be required to provide adequate notice and an opportunity for a hearing prior to the discretionary suspension or revocation of a driver's license. He is not asking this Court to draft and impose upon Illinois a specific scheme. We have however set forth several alternative methods of compliance with due process requirements that have been adopted by other states and that may be adopted by Illinois.

ARGUMENT

I.

DUE PROCESS REQUIRES SOME FORM OF PRIOR HEARING BEFORE THE SECRETARY MAY EXERCISE DISCRETIONARY POWERS TO DEPRIVE A PERSON OF A PROTECTED INTEREST, ABSENT EMERGENCY CIRCUMSTANCES.

Dennis Love is a truck driver. He depends on his driver's license to earn his livelihood and support his family. The Secretary of State revoked Mr. Love's driver's license without giving him any opportunity to contest the decision prior to its effective date.

Under Illinois law, the Secretary was not authorized, even as an exercise of his discretion, to revoke Mr. Love's license to drive a commercial vehicle in his occupation.[3] Even the Secretary's discretionary authority to revoke Mr. Love's private driver's license need not have been exercised.[4]

No legal or political concept more appropriately defines our system of justice and separates it from others than does the concept of due process. The touchstone of due process is protection of the individual against arbitrary action of government. *Wolff* v. *McDonnell,* 418 U.S. 539, 558, 41 L.Ed.2d 935 (1974). "The Fourteenth Amendment as applied to the States, protects the citizen against the State itself and all its creatures. . . [The States] have, of course, important, delicate and highly discre-

[3] See §6-206(c)(2) and discussion hereinafter at 39.

[4] See Rule 6-206(a) and discussion hereinafter at 16.

tionary functions, but none that they may not perform within the limits of the Bill of Rights." *West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624, 637, 87 L.Ed. 1628 (1943).

The basic purpose underlying the Due Process Clause is to avoid arbitrary, capricious, mistaken or authoritarian deprivations of significant interests. Thus, at a minimum, due process requires that before a state may deprive a person of life, liberty or property, such action must be preceded by notice and an opportunity for a hearing appropriate to the nature of the case, *Mullane* v. *Central Hanover Tr. Co.,* 339 U.S. 306, 313, 94 L.Ed. 865 (1950), to allow the individual to "tell his side of the story in order to make sure that an injustice is not done". *Goss* v. *Lopez,* 419 U.S. 565, 580, 42 L.Ed.2d 725 (1975). As this Court stated in *Bell* v. *Burson,* 402 U.S. 535, 29 L.Ed.2d 90 (1971):

> . . . It is fundamental that except in emergency situations . . . due process requires that when a State seeks to terminate an interest such as that here involved, it must afford 'notice and opportunity for hearing appropriate to the nature of the case' *before* the termination becomes effective. (402 U.S. at 542).

The interest protected by the Due Process Clause in *Bell* was a driver's license. The same interest is involved here. Accordingly, it is unquestioned that Mr. Love's driver's license cannot be revoked by the Secretary except in compliance with the requirements of due process. As stated by this Court in *Bell*:

> Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. (402 U.S. at 539).

Due process is a flexible concept that calls for the procedural protections required by the particular situation. *Morrissey* v. *Brewer,* 408 U.S. 471, 481, 33 L.Ed.2d 484 (1972); *Mathews* v. *Eldridge,* 424 U.S. 319, 47 L.Ed.2d 18 (1976).

It requires the opportunity to be heard "at a meaningful time and in a meaningful manner", *Goldberg* v. *Kelly,* 397 U.S. 254, 267, 25 L.Ed.2d at 287 (1970), which means some form of *prior* hearing. E.g., *Board of Regents* v. *Roth,* 408 U.S. 564, 33 L.Ed.2d 548 (1972):

> [A] weighing process has long been a part of any determination of the form of hearing required in particular situations by procedural due process.[8] (408 U.S. at 570.)

---

[8] The constitutional requirement of opportunity for *some* form of hearing before deprivation of a protected interest, of course, does not depend upon such a narrow balancing process. (408 U.S. at 570, n.8.)

In *Boddie* v. *Connecticut,* 401 U.S. 371, 378, 28 L.Ed.2d 113 (1971) this Court stated:

> That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest . . .

Finally, in *Fuentes* v. *Shevin,* 407 U.S. 67, 86, 32 L.Ed.2d 556 (1972) this Court held:

> While the length and consequent severity of a deprivation may be another factor to weigh in determining the appropriate form of hearing, it is not decisive of the basic right to a prior hearing of some kind.

Other situations which require prior procedural safeguards include: termination of welfare benefits (*Goldberg* v. *Kelly,* 397 U.S. 254, 25 L.Ed.2d 287 (1970)); parole revocation (*Morrissey* v. *Brewer,* 408 U.S. 471, 33 L.Ed.2d 484 (1972)); probation revocation (*Gagnon* v. *Scarpelli,* 411 U.S. 778, 36 L.Ed.2d 656 (1973); prison inmate's loss of "good time" (*Wolff* v. *McDonnell,* 418 U.S. 539, 41 L.Ed. 2d 935 (1974)); termination of a federal civil servant (*Arnett* v. *Kennedy,* 416 U.S. 134, 40 L.Ed.2d 15 (1974)); and termination of Social Security disability benefits (*Mathews* v. *Eldridge,* 424 U.S. 319, 47 L.Ed.2d 18 (1976)).

In this case, Mr. Love's duly issued driver's license was revoked by the Secretary of State pursuant to a statute and regulation that provide for no pre-termination hearing or proceeding, formal or informal. Section 6-206 and Rule 6-206 both succinctly and unambiguously provide that the Secretary of State may suspend or revoke a driver's license "without preliminary hearing." Neither provides for any possible hearing prior to the deprivation. In his enforcement of §6-206, the Secretary does not provide any form of pre-revocation protection. The statute, therefore, violates the Due Process Clause on its face and as applied.

The Secretary recognizes that due process must be applied to this case and concedes that there must be a hearing "at a meaningful time." Brief for appellant at 10. He then claims that due process does not require a hearing before revocation because (a) his action was mandatory and ministerial, or even if there was discretion exercised, (b) the emergency nature of the situation required prompt action. Alternatively, the Secretary argues that pre-revocation due process was afforded in traffic court.

The Secretary's assertions are incorrect. The Secretary was not mandatorily required to revoke Mr. Love's license.

(Section A below.) Allegations of emergency are undercut by the seven year period of allegedly disrespectful driving for which Love's license was revoked and by the two months it took the Secretary to make his summary decision. (Section B below.) Traffic court did not provide the appropriate due process hearings in this case because the issues it decided--whether or not Love violated certain driving rules—were different from the issues in this license revocation case, whether or not Love's driving record "indicates disrespect for traffic laws and the safety of other persons on the highway." (Section C below.)

A. The Secretary's Revocation Of Mr. Love's License Was Made Pursuant To Discretionary Authority.

In this case, Mr. Love's duly issued driver's license was revoked by the Secretary of State pursuant to §6-206(a)(3). The Secretary argues that no pre-termination procedures are necessary or would have any value because he claims that the revocation was mandatory, automatic and ministerial, not discretionary.[5] The Secretary maintains that the action he took under §6-206(a)(3) was based solely "on the number of traffic violations for which the driver had been convicted and the number of 'points' accumulated on those convictions. . .". Brief for Appellant at 3. He argues that suspension or revocation follows automatically on a consideration of these two factors and no other factors

[5] Even if the revocation were mandatory and automatic, as the Secretary urges, due process protection would still be required. *Reese* v. *Kassab,* 334 F.Supp. 744 (W.D.Pa., 1971); *Warner* v. *Trombetta,* 348 F. Supp. 1068 (M.D.Pa., 1972), *aff'd. mem.,* 410 U.S. 919. Whether that protection must come before a mandatory revocation, is a question to be considered in another case. This case raises only the question of what procedures and protections due process requires prior to a discretionary revocation of the license.

may be considered. This argument is legally and factually incorrect.

1. Mr. Love's license revocation was effected pursuant to §6-206, which is explicitly headed "Discretionary authority to suspend or revoke license or permit—Right to a hearing."[6] The discretionary aspect of this statute is made even more explicit by the Secretary's Rule 6-206(a), promulgated under the Illinois Vehicle Code, which provides:

> The Secretary of State is authorized to exercise discretionary authority to suspend or revoke driving privileges and the evidence thereof without a preliminary hearing, *or to decline to suspend or revoke such driving privileges.* (Emphasis added.)

The discretionary nature of a suspension or revocation pursuant to §6-206 is further underscored by a comparison of that section with the preceding section, 6-205, which is labeled "Mandatory revocation of license or permit—Hardship cases" and provides ". . . The Secretary of State shall forthwith revoke the license or permit of any driver upon receiving a report of such driver's conviction of any of the following offenses: . . .".

The Illinois legislature clearly understood the difference between discretionary and mandatory authority when it enacted these two consecutive sections. Under §6-205, the Secretary is mandatorily required to take action upon receiving a report of certain convictions from a court clerk. Furthermore, the action he must take is revocation. Under §6-205, the Secretary has no decisions to make and his actions are purely ministerial.

---

[6] The driving record of Mr. Love notes the "(02) discretionary revocation" on 6/6/75. App. at 10-11.

On the other hand, under §6-206, he has three factual or discretionary decisions to make:

> (a) Whether grounds for action exist. The Secretary cannot take any action until he has affirmatively determined that the licensee lacks ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle, has a disrespect for the traffic laws, or, has a disrespect for the safety of other persons upon the highway. Section 6-206(a)(3).
>
> (b) If the Secretary determines grounds exist, he must then determine if any action is warranted. Rule 6-206(a) authorizes him to "decline" to act.
>
> (c) If the Secretary determines some action is warranted, he must decide the specific penalty to be imposed. Even where revocation is called for, as in Rule 6-206(a)(3), he may "substitute an order of suspension therefor." Section 6-206(c)(3).

Each of these three decisions requires the Secretary to consider, balance and weigh several factors. This discretion which the Secretary must exercise has been described by this Court in *The Styria* v. *Morgan*, 186 U.S. 1 (1902) and *Langres* v. *Green*, 282 U.S. 531, 75 L.Ed. 520 (1931) as follows:

> The term *discretion* implies the absence of a hard-and-fast rule. The establishment of a clearly defined rule of action would be the end of *discretion*, and yet discretion should not be a word for arbitrary will or inconsiderate action. 'Discretion means a decision of what is just and proper in the circumstances'. Bouvier's Law Dict. (186 U.S. at 9.)
>
> The term "discretion" denotes the absence of a hard and fast rule. . . . When invoked as a guide to judicial action it means a sound discretion, that is to say, a discretion exercised not arbitrarily or wilfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result. (282 U.S. at 541.)

In order to reach a result that is "right and equitable under the circumstances and the law", it is necessary to first give the licensee an opportunity, after proper notice, to "tell his side of the story in order to make sure that an injustice is not done." *Goss* v. *Lopez,* 419 U.S. 565, 580, 42 L.Ed.2d 725 (1975).

2. The Secretary's statement to the contrary notwithstanding, neither the statute nor the regulation provides that suspension or revocation of a license follows automatically from conviction of a given number of traffic offenses or the accumulation of a given number of points. In making the determination, Rule 6-206(a) provides that:

> The Secretary of State *shall* take into consideration the severity of the offense and conviction, the number of offenses and convictions, and prior suspensions or revocations on the abstract of the driver's record. The Secretary *may* also take into consideration the points accumulated by the driver and noted on his driving record. (Emphasis added.)

Thus, under the regulation, the number of points accumulated does not even have to be considered in deciding whether to take action; it is a discretionary consideration.

Although the Secretary must consider the number of traffic offenses in reaching his decision, this is but one factor to consider. The number of violations does not, by itself, determine the result.

A comparison with §6-205 is again enlightening. In authorizing mandatory revocations under that section, the legislature specifically provided that "the Secretary of State shall forthwith revoke the license or permit of any driver upon receiving a report of such driver's conviction of any of the following offenses: . . .". Following is a list of offenses such as manslaughter or reckless homicide while

using an automobile, drunken driving, use of a car in the commission of a felony, leaving the scene of an accident involving death or personal injury, and three convictions for reckless driving. If the Illinois legislature had intended to make suspension or revocation mandatory and automatic upon the conviction of three moving violations other than reckless driving,[7] it would have so provided in the §6-205 list.

3. Finally, because the Secretary considers the procedure in question totally mandatory, he maintains there is no need for any pre-termination hearing or procedures because there is no way in which such a hearing could change the result. Obviously, under this theory, there is no way that a post-termination hearing could change the result either. Yet §6-206 provides an elaborate termination hearing pursuant to §2-118 of the Illinois Motor Vehicle Code. The latter section in turn provides for a full evidentiary hearing complete with subpoena power and examination of witnesses under oath.[8] Surely the legislature would not require such elaborate expenditures of time, energy and money if it had considered the Secretary's decisions under §6-206 automatic, ministerial and not subject to change. In fact, the legislature specifically provided:

> At the conclusion of a hearing pursuant to Section 2-118, the Secretary of State shall either rescind or continue an order of revocation or shall substitute an order of suspension therefor; or, good cause appearing therefor, rescind, continue, change or extend his order of suspension. (§6-206(c)(3))

---

[7] Mr. Love has never been charged with or convicted of reckless driving.

[8] However, during the pendency of this hearing the suspension or revocation remains in full force and effect.

B. An Emergency Situation Does Not Exist.

Due process is not an absolute concept. There are some extraordinary situations where constitutional protections must be temporarily suspended. The rarity of these instances is well shown by the terms used by this Court to describe them: "extraordinary situations" (*Boddie* v. *Connecticut,* 401 U.S. 371, 379, 28 L.Ed.2d 113, 1971); "truly unusual" (*Fuentes* v. *Shevin,* 407 U.S. 67, 90, 32 L.Ed.2d 556, 1972); "emergency situations" (*Bell* v. *Burson,* 402 U.S. 535, 542, 29 L.Ed.2d 90, 1971); and, "rare and extraordinary" (*Board of Regents* v. *Roth,* 408 U.S. 564, 570, 33 L.Ed.2d 548, 1972).

In *Fuentes,* this Court set forth the three conditions that must coincide to create such an extraordinary situation:

> First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance. (407 U.S. at 91.)

While allowing very limited exceptions to the Due Process Clause, this Court has consistently recognized and reaffirmed the basic value of and need for a broad, consistent application of the concept. Thus, "at its core, the right to due process reflects a fundamental value in our American constitutional system", *Boddie* v. *Connecticut, supra,* at 374, and "the constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of" a protected interest. *Fuentes* v. *Shevin, supra,* at 80. The government that claims the right to act in disregard

of the Constitution faces a heavy burden to show that it falls within the rare exceptions.

In the case at bar, the Secretary claims that an "emergency" situation exists "which obviates the necessity for a pre-suspension or pre-revocation hearing". Brief for Appellant at 24. The emergency situation claimed is the protection of the general welfare by the removal of dangerous drivers from the highways. This contention is frivolous:

1. Mr. Love was specifically not charged with being a dangerous driver or with having a disregard for the safety of other persons on the highway.

2. The statute is neither narrowly drawn nor drawn with sufficient standards to determine when emergency action is necessary and justified.

3. There is no special need for prompt action where Mr. Love's license revocation was based on activities that allegedly took place over a period of seven years.

4. The Secretary did not treat the situation as an emergency.

1. Mr. Love Was Specifically Not Charged With Being A Dangerous Driver, Or With Having A Disregard For The Safety Of Other Persons On The Highway.

The only reason given by the Secretary to justify an emergency revocation of Mr. Love's license without due process was to protect "the general welfare by the speedy removal of dangerous drivers from the highways . . .". (Brief for Appellant at 8). This reason is inapplicable to Mr. Love. The Secretary charged Mr. Love only with:

> having been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates disrespect for the traffic laws. (App. at 13).

Mr. Love's license was revoked pursuant to §6-206(a)(3). In addition to "disrespect for the traffic laws", that statute specifically lists "lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle" and "disrespect for . . . the safety of other persons upon the highway" as grounds for revocation. Mr. Love was not charged with either of these grounds.

Having not charged Mr. Love with being an unsafe or dangerous driver, the Secretary now seeks to justify the revocation of the license of a non-dangerous, but allegedly disrespectful driver, without prior due process protection because of the alleged emergency nature of the situation. To invoke the limited emergency exception to the Due Process Clause, it must be shown that the emergency "was necessary and justified *in the particular instance.*" *Fuentes, supra,* at 91 (emphasis supplied). On the facts, the Secretary has not met this requirement.

2. The Statute Is Neither Narrowly Drawn Nor Drawn With Sufficient Standards To Determine When Emergency Action Is Necessary And Justified.

In order for a summary action to meet the extra-ordinary situation requirement, it must have been taken pursuant to the standards of a statute narrowly drawn to meet only unusual conditions. *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337, 339, 23 L.Ed. 2d 349 (1969); *Fuentes* v. *Shevin, supra.* But Section 6-206 authorizes discretionary suspension or revocation of a driver's license "without preliminary hearing" in a number of situations where it cannot be automatically inferred that there is dangerous driving constituting an emergency. It permits revocation without hearing for 20 reasons, including:

3. Disrespect for the traffic laws.

5. Permitting an unlawful or fraudulent use of a license or permit.

8. Being ineligible for a license or permit for any of the 11 reasons set forth in §6-103. These reasons include being under age 18, "suffering from any mental disability", and failure to deposit proof of financial responsibility.

9. Making a false statement or knowingly concealing a material fact in any application for a license or a permit.

10. Displaying or representing as his own any license or permit not issued to him.

12. Submitting to an examination for the purpose of obtaining a driver's license or permit for some other person.

14. Having been convicted of violating any of the eight provisions of §6-301. These offenses include possessing a cancelled license, lending a license, displaying someone else's license, and non-feloniously failing to perform any act required by the Motor Vehicle Code.

This is not a narrowly drawn statute.

The Secretary may be justified, for example, in revoking the driver's license of a person who took the driver's license examination for another person. But there can be no inference in this violation that the person taking the test is a dangerous driver. Actually, the opposite inference (that he is a good driver) is more appropriate. The Secretary may be justified, after a hearing, in revoking the license of a driver who allows a minor to use it as proof of majority. But there can be no automatic inference that such a person is a dangerous driver. Similarly, a person may be disrespectful of the traffic laws but not be a dangerous driver, which is the conclusion the Secretary obviously came to with regard to Mr. Love.

Section 6-206 lacks standards to determine when emergency action is actually necessary and justified. The statute simply gives blanket authorization to ignore due process in situations where an emergency could not possibly exist and where there is no possible inference from the ground of revocation that the licensee is a dangerous driver.

3. There Is No Special Need For Prompt Action Because Mr. Love's License Revocation Was Based On Alleged Activities That Took Place Over A Period Of Seven Years.

The Secretary claims he was faced with an "emergency situation". What is the emergency? When did it become apparent? Emergency is defined as:

> "EMERGENCY. A sudden unexpected happening; an unforeseen occurrence or condition; specifically, perplexing contingency or complication of circumstances; a sudden or unexpected occasion for action; exigency; pressing necessity. (Black's Law Dictionary, Rev. 4th ed. (1968)).

In the constitutional sense, the requirement that immediate action is necessary to forestall an obviously disastrous result must be added to the definition.

In the cases cited by the Secretary as examples of when this Court has upheld summary action for emergency reasons (Brief for Appellant at 21), both parts of the definition have been present, *i.e.*, (a) a sudden occurrence, (b) requiring immediate action to forestall a disaster. Thus, summary seizure of property was allowed in *North American Storage Co.* v. *Chicago*, 211 U.S. 306, 53 L.Ed. 195 (1908) to protect the public from contaminated food; in *Fahey* v. *Mallonee*, 332 U.S. 245, 91 L.Ed. 2030 (1947) to protect against the economic disaster of bank failure; and in *Ewing* v. *Mytinger & Casselberry, Inc.*, 339 U.S. 594, 96 L.Ed. 1078 (1950) to protect the public from misbranded drugs.[9]

In the case at bar, there was no sudden emergency requiring immediate action. The revocation of Mr. Love's driver's license was based on a course of conduct encompassing seven years. Mr. Love received a traffic citation on August 20, 1968, and was subsequently found guilty of that violation. But for that 1968 traffic ticket, Mr. Love's driver's license would not have been revoked on June 6, 1975.

The traffic violation conviction giving rise to Mr. Love's revocation was his sixth conviction in seven years. There is nothing magical about the sixth conviction that creates an emergency situation that was not present at the time of the fifth conviction. The Secretary's claim of an emergency becomes more ludicrous when it is realized that the revocation is actually based on how the traffic violations are grouped and not their absolute number. Mr. Love's driver's license was revoked because he allegedly had three suspensions within ten years. In order for a license to be suspended for traffic violations, the licensee must have been convicted of not less than three offenses committed within any 12-month period. Sec. 6-206(a)(2). Mr. Love had a driver's license for seven years prior to the revocation. During that time he was convicted of only six traffic

---

[9] The Secretary's citation of *F.T.C.* v. *Dean's Food Co.*, 384 U.S. 597, 16 L.Ed. 2d 802 (1966) is misplaced. In that case the F.T.C. sought an injunction against a merger pending administrative hearings. The injunction was not granted until after notice and a full hearing. Thus, no due process question was presented.

offenses that count toward a §6-206(a)(2) suspension.[10] Unfortunately, he grouped these six offenses into two groups of three, each group committed within a 12-month period and resulting in the first suspension and the revocation.[11] During that same seven year period it would have been possible for another driver to have been convicted of 14 traffic violations and, as long as no three were committed within any 12-month period, not be subject to any suspension or revocation.

Clearly, this case does not present an emergency situation requiring the suspension of one of our most basic constitutional guarantees. This case does present a clear example of a situation where a state official is authorized to take discretionary punitive action against a licensee. Such action must be preceded by some form of hearing.

4. The Secretary Did Not Treat The Situation As An Emergency.

After the last conviction, the Secretary waited over two months before acting. The conviction giving rise to the Secretary's action occurred on March 31, 1975. The Clerk of the Court is required to forward to the Secretary of State a report of the conviction within 10 days. Sec. 6-204(a)(2). The Secretary did not revoke the license until June 6, 1975. The two months which elapsed before the

[10] The April 21, 1968 ticket shown on Mr. Love's driving record (App. at 10) was for having a broken tail light and does not count toward a suspension. The November 12, 1969 notation is for driving while suspended.

[11] The second suspension resulted from Mr. Love driving during the first suspension.

Secretary acted afforded ample opportunity for a hearing,[12] as was clearly demonstrated by subsequent events. On June 6, 1975, the district court issued a temporary restraining order suspending the revocation on the condition that the plaintiff apply for a hardship license. Mr. Love so applied on June 10th. The Secretary then held a hearing and on July 25th, less than two months later, issued a hardship license.

The Secretary, judged by his own action in this case, did not treat the situation as an emergency. *Jones* v. *Penny*, 387 F.Supp. 383 (D.N.C. 1974). An after-the-fact claim of an emergency cannot justify a denial of due process.

C. The Due Process Hearing Requirement Is Not Met By The Proceedings In Traffic Court.

The Secretary does not contest the fact that the statute fails to provide for any type of hearing by the Secretary prior to revocation or that it is not possible to obtain one. Instead, as one alternative argument, the Secretary claims due process does not require him to provide any type of pre-revocation hearing because there is a hearing on the merits of each underlying traffic violation in traffic court. This argument is without merit.

[12] The Secretary argued below that the conviction did not become final for 30 days (which is the time for appeal in Illinois) and he could not act within that period. This contention is without merit. Section 6-206(b) provides "if any conviction forming the basis of a suspension or revocation authorized hereunder is appealed, the Secretary of State may rescind or withhold the entry of the order of suspension or revocation. . . .". This provision clearly contemplates action before the time for appeal has expired. In any event, the Court below, accepting arguendo the Secretary's contention, found a delay of only one month too long to indicate an emergency situation. (App. at 21).

1. In making this argument, the Secretary again assumes that the revocation is mandatory and automatic rather than discretionary. As we have shown above[13] the revocation is discretionary. In addition to the convictions, the statute makes suspension or revocation dependent on a determination of whether the driver's repeated involvement in collisions or conviction of offenses indicates lack of ability to use due care or disrespect for the traffic laws and the safety of others. In making the decision to suspend or revoke, the Secretary therefore must take into consideration factors in addition to the mere number of convictions.

For example, with even a minimal prior hearing Mr. Love could show that a review of his complete driving record and the number of miles that he has driven demonstrate that he is not disrespectful to the traffic laws. He could also have pointed out that his commercial license could not lawfully be revoked.[14] Sec. 6-206(c)(2).

In contrast, a traffic court determines guilt or innocence only as to a particular ticket. The questions of a driver's lack of ability, disrespect for the traffic laws or the safety of others on the highways, are discretionary elements that must be determined before a suspension or revocation is found to be appropriate; they are never before the traffic court judge.

Under these circumstances the holding of the district court, concerning discretionary revocation, should be affirmed:

> So long, at least, as Illinois law makes a determination of the existence of such lack of ability or disregard,

[13] See Section A, pp. 15 to 19.

[14] See Section II B 1, p. 37 below.

> a condition to revocation or suspension, a licensee must be given a hearing on those issues before his license can be suspended or revoked. (App. at 20)

Accord, *Cicchetti* v. *Lucey*, 377 F.Supp. 215 (D.Mass. 1974); *Kentucky* v. *Thomas*, 467 S.W.2d 335 (Ky. 1971); *Nusberger* v. *Wisconsin Division of Motor Vehicles*, 352 F.Supp. 515 (W.D.Wis. 1973); and *Jones* v. *Penny*, 387 F.Supp. 383 (D.N.C. 1974).

Further, the Secretary's determination that there is cause to suspend or revoke a license does not end the matter. The Secretary must also determine the appropriate punishment, *i.e.* the length of a suspension and the terms and conditions of a revocation or suspension. None of these considerations are to be found within a finding of guilty by a traffic court on a traffic citation.

In this case, for example, it was ultimately determined by the Secretary that revocation would create undue hardship. The hearing on the hardship question only makes sense prior to the effective date of the revocation and consequent hardship.

In addition to the issuance of a restricted driving permit, the Secretary has numerous other discretionary powers regarding the action to be taken against any licensee. Where the Secretary has the power and authority to revoke a license, he may "substitute an order of suspension therefor". §6-206(c)(3). The length of a suspension is also discretionary with the Secretary. The number of "points" that a driver has accumulated only sets the maximum length of a suspension. Rule 6-206(a)(2) authorizes the Secretary to suspend for a lesser period of time. None of these considerations are before the traffic court.

Wright v. *Malloy*, 373 F.Supp. 1011 (D. Vt., 1974), *aff'd. mem.*, 419 U.S. 987, 42 L.Ed. 2d 261 (1974), cited by

the Secretary (Brief for Appellant at 18), actually supports Mr. Love's position and the holding of the district court. *Wright* involved a revocation pursuant to Vermont's financial responsibility laws. In *Bell* v. *Burson*, 402 U.S. 535, 29 L.Ed. 2d 90 (1971) this Court had held that if fault is an important factor in a State's decision to suspend or revoke a license pursuant to its financial responsibility laws, the state may not revoke the license until such time as there has been a prior hearing on the issue of fault. Subsequent to the *Bell* decision, Vermont amended its financial responsibility statute to provide for a hearing on the issue of fault prior to the time action is taken by the Commissioner. As summarized by the court in *Wright*, the statute provided that proof of financial responsibility would be required:

> . . . only upon the determination of fault by the Commissioner after due notice and hearing. At the same time, the statute challenged in this action was amended to provide for a hearing with reference to fault if the operator's conviction for the motor vehicle violation arising out of the accident does not indicate that he was at fault in any degree. If the conviction indicates fault, the operator is required to file proof of future financial responsibility and suffer the loss of his license without an independent hearing as to such fault. (373 F.Supp. at 1017).

Thus, under the Vermont statutory scheme if all of the elements necessary to require proof of financial responsibility are heard and determined in connection with the hearing on the traffic court violation, the Commissioner need not provide a separate hearing. However, if all the factors are not heard and determined in connection with the traffic court violation, the Commissioner must provide a hearing on those issues prior to requiring proof of financial responsibility or revoking a license.

In the case at bar, the Secretary's decision to revoke Mr. Love's license was based on factors not considered or determined in traffic court. Therefore, the Secretary should have given Mr. Love a hearing on those factors prior to revocation. *Wright* is entirely consistent with and supportive of Mr. Love's position.

2. The fallacy of the Secretary's claim that due process requirements are fulfilled by the traffic court proceedings with regard to a discretionary suspension or revocation under §6-206 is further illustrated by a comparison to the statutory provisions in §6-205 regarding mandatory revocations. In mandatory revocation situations, all the elements required for revocation are determined in traffic court. Nor does the Secretary have discretion as to the penalty to be imposed. Sec. 6-205 provides only for revocations.[15]

The Secretary thus only carries out ministerial acts. Indeed, the license is actually surrendered in Court at the time of the conviction and forwarded to the Secretary by the Clerk of the Court. Sec. 6-204.[16] The Secretary merely stamps license "revoked".

---

[15] The Secretary may grant a hardship license under §6-205, but the court is specifically empowered to make recommendations as to such license. The court has no such power under §6-206.

[16] Sec. 6-204 provides, in part:

> Whenever any person is convicted of any offense for which this Act makes mandatory the revocation of the driver's license or permit of such person by the Secretary of State, the judge of the court in which such conviction is had shall require the surrender to the clerk of the court of all driver's licenses or permits then held by the person so convicted, and the clerk of the court shall, within 10 days thereafter, forward the same, together with a report of such conviction to the Secretary.

The Secretary's reliance on *Scott* v. *Hill,* 407 F.Supp. 301 (E.D. Va., 1976), is therefore inappropriate. *Scott* involved a mandatory revocation[17] under Va. Code §46.1-421(b), which provides "The Commissioner shall forthwith revoke and not thereafter reissue operator's or chauffeur's license of any person upon receiving a record of a third conviction of such person" for drunken driving. Under that statute, the Commissioner was prohibited from considering any factor other than the three drunk driving convictions. The Commissioner had a mandatory duty to act "upon receiving a record of a third conviction". The revocation considered in the *Scott* case was merely a ministerial act, automatic upon three drunken driving convictions. The Virginia statute in the *Scott* case is substantially similar to the Illinois mandatory revocation statute. §6-205. There are no additional factors to be determined outside the traffic court hearing.

The State of Virginia, like Illinois, differentiates between mandatory and discretionary suspensions and revocations. But Virginia, unlike Illinois, provides that a licensee is entitled to a prior judicial hearing, completely separate from traffic court, to determine whether his license should discretionarily be suspended or revoked. Thus, under Va. Code §46.1-387.1 the Commissioner may take action to suspend or revoke the license of individuals who have "demonstrated their indifference for the safety and welfare of others and their disrespect for the laws. . .". The initial determination to take action is determined by the number of convictions set forth on the driving record as defined in Va. Code §46.1-387.2. However, the Commissioner cannot automatically revoke on the basis of the driving record. Instead the Commissioner must certify an abstract of the record to the attorney for the Commonwealth (Va. Code §46.1-387.3) who files an information against the licensee in the proper court (Va. Code §46.1-387.4). The licensee is then served with notice and allowed to appear and present a defense. Va. Code §46.1-387.6; *Ferguson* v. *Gathright,* 485 F.2d 504 (4th Cir. 1973). After this hearing the court decides whether or not to revoke. Va. Code 46.1-387.6.

[17] Similarly, all the other cases cited by the Secretary on pages 11 through 18 of his brief involve mandatory revocation. See also *Horodner* v. *Fisher,* 382 N.Y.S. 2d 28 (1976), *appeal dismissed* ..... U.S. ....., 45 L.W. 3225 (1976).

If Love had a Virginia license instead of an Illinois license, he would have had all the necessary safeguards before his right to drive had been revoked.

II.

WHAT PROCESS IS DUE

Once it has been determined that due process applies, the question remains what process is due. *Morrissey* v. *Brewer,* 408 U.S. 471, 481, 33 L.Ed.2d 484 (1972); *Goss* v. *Lopez,* 419 U.S. 565, 577, 42 L.Ed.2d 725 (1975). The nature and quality of the prior hearing required in a specific situation is determined by a balancing or weighing of three distinct factors, set forth in *Mathews* v. *Eldridge,* 424 U.S. 319, 47 L.Ed.2d 18 (1976)*supra,* as follows:

> "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." (424 U.S. at 335.)

However, this Court has consistently held that the balancing and weighing process cannot totally eliminate the basic requirement of some form of prior hearing. *Board of Regents* v. *Roth,* 408 U.S. 564, 33 L.Ed.2d 548 (1972); *Boddie* v. *Connecticut,* 401 U.S. 371, 378, 28 L.Ed.2d 113 (1971); *Fuentes* v. *Shevin,* 407 U.S. 67, 86, 32 L.Ed.2d 556 (1972).

Section 6-206 does not provide any form of pre-revocation protection. It violates the Due Process Clause on its face and as applied without a consideration of the balancing factors set forth in *Mathews.*

Nevertheless, an application of the *Mathews'* standards and method of analysis to the facts of this case is particularly instructive. It demonstrates the value and necessity of "some forms of hearing before deprivation" to protect licensees from arbitrary action. We now turn to these considerations.

A. The Interest Of The Licensee In Having Pre-Revocation Procedures That Meet The Requirements Of Due Process.

The interest of the licensee affected by the suspension or revocation of his license has been described by this Court as "important" because "Once licenses are issued . . . their continued possession may become essential in the pursuit of a livelihood". *Bell* v. *Burson,* 402 U.S. 535, 539, 29 L.Ed.2d 90 (1971). Thus, a licensee employed as a truck driver, cab driver, bus driver, deliveryman, chauffeur or any number of other occupations in which driving a motor vehicle is an integral part of the job will lose his employment if his license is suspended or revoked because he can no longer fulfill the job requirements. Mr. Love, a truck driver, is in this category.

A licensee who is not a professional driver will also lose his job upon suspension or revocation of his license if the use of an automobile is necessary in his job (*e.g.* clergymen or salesmen who must travel from one place to another in the course of their employment) or in order to get to and from his place of employment because of lack of public transportation. The petitioner in *Bell* was in this category.

Automobiles may also be necessary for regular or emergency medical attention for the licensee or a member of his family. For example, at the time of Mr. Love's license revocation his wife was eight months pregnant.

The State of Illinois specifically recognizes that the suspension or revocation of a driver's license may cause "undue hardship" so often that the Motor Code provides for a special hearing to "relieve undue hardship" by the issuance of a restricted driving permit. Section 6-206(c)(3). However, this hearing is provided as a part of the general post-suspension or revocation hearing under §2-118, available only after a suspension or revocation becomes effective. In order to obtain this post-revocation hearing, the licensee must make a written request therefor. The Secretary has 20 days after receipt of the application in which to notify the licensee of the date that has been set for the hearing. There is no particular time by which the hearing must actually be held, the statute requiring only that it be held "as early as practical". After the hearing is held, there is no period of time specified in which the Secretary must act. In instances in which counsel for Mr. Love have represented persons at administrative hearings before the Secretary of State, a minimum of three-and-one-half months has elapsed between the filing of a request for a hearing and the rendering of the final administrative decision. The maximum time for a decision has been in excess of nine months. (App. at 15).

Significantly, the undue hardship caused by the Secretary's action is irreparable. If the suspension or revocation of a license causes a licensee to lose wages there is no way that the lost money can be recouped. In *Mathews* v. *Eldridge,* 424 U.S. 319, 47 L.Ed. 2d 18 (1976) and *Arnett* v. *Kennedy,* 416 U.S. 134, 40 L.Ed.2d 15 (1974), this Court authorized the plenary evidentiary hearing to be conducted and final administrative determination to be made subsequent to the effective date of the action only because (1), there were substantial procedures and hearings provided before the effective date and, (2), if the private interest prevailed at the time of the final administrative hearing, the individual was entitled to retroactive payments or back pay. The individual was therefore made whole for any monetary loss incurred because of the delay between the effective date of the action and the final administrative hearing. In the case at bar, the Secretary provides no procedures or hearings prior to revocation and does not make up any monetary loss suffered by licensees in cases of wrongful revocation.

If a licensee prevails at the hearing and the Secretary rescinds his order of revocation or suspension and restores the license, or if the licensee partially prevails and is awarded a restricted driving permit, the hardship caused by the initial action may even continue prospectively. If the licensee has lost his job because of the revocation, a restoration of the license does not automatically mean that there will be a restoration of employment.

The private interest present in this case is thus much greater than the private interests involved in *Mathews* and *Arnett.* In *Mathews,* if the disability recipient ultimately prevailed he received full lost benefits and was placed back on the Social Security rolls to receive future benefits. In

Arnett, the wrongfully discharged member would not only receive full back pay but would also have his job restored.

The private interest affected by the official action is unquestionably important and substantial. The impact of the failure to provide any form of due process protections prior to suspension or revocation will fall most heavily on the working poor and those in moderately paid occupations.

B. The Risk Of Erroneous Deprivation With No Prior Procedures And The Probable Value Of Having Some Procedural Safeguards.

The Secretary provides no form of pre-revocation procedures or safeguards against an erroneous revocation or the infliction of a punishment that will result in undue hardship. In this case, due process requires, at a minimum, adequate notice which tells the licensee what he is accused of and what the basis of the accusation is, the right to submit a written response to the notice, and an opportunity for an informal conference with an agent of the Secretary. These pre-revocation procedures would have significant value in lessening the risk of erroneous deprivation, as is evident from the facts of this case.

1. The Secretary was not authorized, even as an exercise of his discretion, to revoke Mr. Love's license to drive a commercial vehicle in his occupation.

On June 3, 1975, Mr. Love received a notice from the Secretary of State that his driver's license had been revoked effective June 6, 1975. The revocation purported to be pursuant to §6-206(a)(3), which provides that the Secretary may suspend or revoke the driver's license of a person who:

> Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of

> offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway.

The notice simply stated that the action had been taken as a result of:

> Your having been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates disrespect for the traffic laws. (App. at 13).

The statute must be read in conjunction with the administrative regulations promulgated pursuant thereto. The applicable part of Rule 6-206(a)(3) provides that "A person who has been suspended thrice within a ten year period shall be revoked".[18] The Secretary contends that the alleged ground on which the revocation was based was three suspensions within a ten year period. (Brief for Appellant at 6). Mr. Love's driving record, however, shows only two suspensions, both in 1969. In order for Rule 6-206(a)(3) to be applicable there has to be a third suspension.

The Secretary argues that at the time of the revocation there were grounds for the third suspension pursuant to §6-206(a)(2) and that he had merely not taken the intermediate step of making the suspension prior to invoking the revocation. (Brief for Appellant at 6). The question is not whether the Secretary must take the "intermediate step" of suspending a third time before revocation; rather, the question is whether grounds existed for the total suspension of Mr. Love's license under §6-206(a)(2) and, therefore, for the total revocation under §6-206(a)(3). In fact, such grounds did not exist.

[18] We assume for purposes of this discussion that it is the driver's license and not the person who is suspended and revoked.

Section 6-206(a)(2) gives discretionary authority to the Secretary to suspend the driver's license of a person who:

> Has been convicted of not less than 3 offenses against traffic regulations governing the movement of vehicles with the exception of those offenses excluded under the provisions of Section 6-204(2), committed within any 12-month period so as to indicate the disrespect for traffic laws and a disregard for the safety of other persons on the highways; conviction upon 3 charges of violation of Section 11-601 of this Act committed within a period of 12 months shall be deemed grounds for the revocation or suspension of a license or permit under this Section, provided that no such revocation or suspension shall be entered more than 6 months subsequent to the date of conviction of the 3rd offense.

But, this section is specifically qualified by §6-206(c)(2), which provides:

> If the Secretary of State suspends or revokes the license of a person under sub-paragraph 2 of paragraph (a) of this Section, *a person's license to drive a commercial vehicle only as an occupation shall not be revoked or suspended unless five offenses were committed,* at least 2 of which occurred while operating a commercial vehicle in connection with his regular occupation. (Emphasis added).

Mr. Love is a truck driver. He needs a license to drive a commercial vehicle in his occupation. Within the year prior to the revocation, Mr. Love had not been charged with five violations. He specifically came within the provisions of (c)(2).

Thus, the suspension of Mr. Love's license to drive a commercial vehicle was not authorized under §6-206(a)(2).

Since the Secretary's authority to revoke under sub-section (a)(3) is dependent on the authority to suspend under sub-section (a)(2), the Secretary did not even have the discretionary authority to revoke Mr. Love's license to drive a commercial vehicle.

The fact that Mr. Love had a commercial license is evident on the records administered by the Secretary. Mr. Love has a Class D license. (App. at 10). This classification authorizes the holder to drive any motor vehicle except motorcycles. A Class D license is required to drive semi-trailer and tractor trailer vehicles.

Any of the procedures set forth above would have obviated the above error. In particular, the notice should have informed Mr. Love that the revocation was based on a simultaneous suspension under sub-section (a)(2) and advised him of his rights under (c)(2).

2. Under the present procedures there is no means to correct even clerical errors. The notice of revocation says that "action has been taken as a result of: Your having been repeatedly convicted of offenses . . .". (App. at 10). How many offenses? When were the offenses committed? How many offenses are required before action may be taken? Is the record accurate?

Answers to these questions are necessary for the licensee to determine if a defense exists. They are not answered by the notice. There is no way to respond to such notice. There is no way for the licensee to protect himself against even clerical error. The notice is grossly inadequate.

3. One question present in Mr. Love's case was whether he had "disrespect for the traffic laws". In order for this question to be accurately determined by the Secretary, he must hear Mr. Love's side. Disrespect cannot be determined by the number of traffic tickets alone. At the very least, disrespect is a function of the relationship between the number of violations to the number of miles driven. This concept is implicit in sub-section (c)(2) which allows commercial drivers five violations instead of three over the same time period before suspension.

California explicitly recognizes this concept by providing that in determining whether to suspend or revoke a license for such reasons as three accidents in a year "the department shall give close consideration to the amount of use or mileage traveled in the operation of a motor vehicle". Cal. Veh. Code §138-2. The only way this vital information can be made known to the Secretary is from the licensee, by written or oral responses to the notice.

4. If the licensee had the opportunity to respond and be heard, he could submit mitigating factors that may accompany the traffic citations. Such factors include whether or not the citation arose out of an accident involving personal injury or property damage. Other factors include traffic or weather conditions. Did the offense arise at a non-peak traffic period as compared to a peak period? Did the offense occur in a snow storm or in dry pavement conditions? Speeding ten miles over the limit on an uncrowded highway is less severe and less dangerous to the safety of others than speeding ten miles over the limit in a school zone. Similarly, speeding on dry pavement under good visibility conditions is less severe and less dangerous to the safety of others than speeding by the same amount in a snow storm. Although the Secretary cannot go behind the conviction, he must consider the severity of the circumstances. Rule 6-206(a). This information can only come from the licensee. Such factors are pertinent to both the question of whether to take initial action and, if so, the penalty to be imposed.

5. Section 6-206(c)(3) authorizes the Secretary to issue a restricted driving permit to "relieve undue hardship" caused by the suspension or revocation. The information concerning the hardship (family health needs, transportation to and from employment, lack of adequate public transportation in particular communities) can only come from the licensee. With prior procedural safeguards, such hardships could be made known to the Secretary and particular relief could be tailored to meet the need.

6. Section 6-206 authorizes the suspension or revocation of a license, "without preliminary hearing" for twenty different reasons. Mr. Love's license was revoked pursuant to sub-section (a)(3). Persons whose licenses were revoked or suspended for any of the other reasons would similarly benefit from adequate due process protections. Many of the other grounds are clearly susceptible to basic factual differences between the Secretary and the licensee, such as:

5. Has permitted an unlawful or fraudulent use of such license or permit;

8. Is ineligible for such license or permit under the provisions of Section 6-103 of this Act;

9. Has made a false statement or knowingly concealed a material fact in any application for a license or permit;

10. Has displayed or represented as his own any license or permit not issued to him;

12. Has submitted to an examination or has obtained the services of another person to submit to an examination for the purpose of obtaining a drivers license or permit for some other person;

16. Has violated Section 11-204 of this Act relating to fleeing from a police officer.

The factual questions relating to these issues can only be resolved by a full exchange of information and an oral conference.

The constitutional problem with §6-206 is that, despite its recognition of the need for a plenary post-revocation evidentiary hearing, it allows the revocation to initially take place without any kind or manner of preliminary hearing. Plaintiff does not argue that a full evidentiary hearing must take place prior to revocation. However, the fact that such a hearing is required or necessary in the revocation process requires that there be some type of pre-revocation hearing or proceeding.

In *Mathews* and *Arnett*, substantial procedures and hearings were provided prior to the effective date of the action. In discussing this factor to determine the specific dictates of due process, this Court was dealing with situations in which the already existing procedures would probably catch most improper actions. This Court was attempting to determine the relative value of additional procedures when the existing procedures had failed. Nothing like that exists in the case at bar. There are no prior procedures.

As we have shown above, the right to an adequate notice and the opportunity to be heard prior to revocation would have substantial value in preventing erroneous decisions and undue hardship. The failure of the statute in question here to provide any pre-revocation protection violates due process.

C. The Interest Of The State In Revoking Licenses Without Any Of The Requirements Of Due Process.

The third criteria is the government's interest. The only governmental interest claimed by the Secretary is to protect the general welfare by removing unsafe drivers from

the highway. Due process is not antagonistic to this concept.[19]

The interest of the State of Illinois in suspending or revoking drivers' licenses is no different from that of the other states. Many states have developed statutes and administrative procedures which give licensees adequate procedural safeguards prior to the suspension or revocation of a license. The details of these procedures will be discussed in the following section. In light of the action taken by a substantial number of states in the identical situation, it is extremely difficult for the Secretary to maintain a governmental interest so overriding that it calls for the complete suspension of the Due Process Clause.

III.

STATUTES AND PROCEDURES EMPLOYED BY OTHER STATES DEMONSTRATE THAT WORKABLE ALTERNATIVES EXIST WHICH PROTECT GOVERNMENTAL INTERESTS AND PROVIDE ADEQUATE PROCEDURAL SAFEGUARDS.

Reconciling due process and highway safety is not difficult. Other states recognize the serious consequences that flow from license suspension or revocation and offer meaningful opportunities for licensees to contest or otherwise respond prior to a proposed suspension or revocation. Some progressive states even promote highway safety by establishing procedures for driver rehabilitation and improvement within the license suspension and revocation process.

In the present case, Mr. Love prays that the present Illinois statute and administrative procedures be declared unconstitutional and that the state be required to provide

[19] See discussion above at p. 20.

notice and an opportunity for a hearing prior to the discretionary suspension or revocation of a driver's license. He is not asking this Court to draft and impose upon Illinois a specific scheme. But it is useful to examine the statutes and administrative procedures developed by other states in order to demonstrate workable alternative methods of compliance with due process requirements.

Maryland authorizes the discretionary suspension or revocation of a driver's license for exactly the same reason as in the case at bar. However, in Maryland this happens only "after due hearing." Md. Ann. Code Art. 66½, 6-206, which provides in part that:

> The Department may suspend or revoke a license after due hearing, upon showing by its record or other sufficient evidence that the licensee:
>
> (1) Is either an unfit or unsafe driver.
>
> (2) Has been convicted with such frequency of violations of the traffic regulations governing the movement of vehicles as to indicate an intent to disregard the traffic laws and the safety of other persons on the highways . . .

A licensee is given 15 days' notice of the Department's proposed action. The notice clearly and explicitly notifies the licensee of his rights and how to obtain them. If, during that time, the licensee requests a hearing, the suspension or revocation is stayed until the hearing is concluded.

The licensee's exercise of his right to a hearing is made particularly simple and efficient by allowing him to merely check a box on the notice itself. A copy of a form Maryland Department of Transportation Notice of Revocation is reproduced herein as Appendix A.[20]

[20] The notice should be improved by providing more detailed information as to the facts relied on by the Department.

In Wyoming, a licensee is entitled to a full evidentiary hearing before a discretionary suspension or revocation. The Wyoming Motor Vehicle Division is authorized by Wyo. Stat. Sec. 31-276.26(b) to:

> Suspend the license of any driver for a period not to exceed 12 months, upon a showing by its records or other sufficient evidence that the licensee:
>
> > (i) Is an (sic) habitually reckless or negligent driver of a motor vehicle, such fact being established by a record of moving violations, accidents or other evidence. . . .

However, Wyo. Stat. §31-276.26(c) requires that:

> Before suspending or revoking the license or driving privilege of any person as authorized in this section, the division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practicable within 20 days after receipt of the request at a time and place specified by the division. Upon the hearing, the motor vehicle director or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers in accordance with the Wyoming Administrative Procedure Act (§§9-276.19 to 9-276.33) and may require a re-examination of the licensee . . .

The licensee is thus given 20 days to request a hearing. Such a request stays the suspension until all administrative and judicial review of the matter is completed.

The notice of proposed suspension or revocation lists all the traffic convictions assessed to the licensee by date, charge, and place. The notice also advises the licensee that "Limited driving privileges can be granted on a showing of sufficient cause." A copy of an actual notice from the Department of Revenue and Taxation, Motor Vehicle Division, with the name of the licensee deleted, is attached hereto as Appendix B.

In Texas, the procedure for the suspension or termination of a license for such reasons as four traffic convictions in a 12-month period or seven traffic convictions within 24 months is set forth in Tex. Rev. Civ. Stat. Art. 6687b, §22. When the Department of Public Safety determines that grounds exist for the suspension or revocation of a license, it must file a Petition for Administrative Hearing in a police court or before a justice of the peace. Summons is served on the licensee and a full evidentiary hearing is held. The court determines whether the license shall be suspended or revoked and, if suspended, the length of suspension. Upon a decision favorable to the Department, the licensee may appeal to the county court for a trial *de novo*. This trial is also a full evidentiary hearing and may be by jury. Tex. Rev. Stat. Art. 6687b, §31. Any suspension or revocation is stayed pending the second trial.

The form of Petition for Administrative Hearing is attached hereto as Appendix C. The second page of the petition itemizes the alleged traffic convictions.

Ohio also provides for a full evidentiary hearing before an independent judicial officer. The licensing authority has the power to suspend a license upon the accumulation of a certain number of "points" over a specified period of time. Ohio Rev. Code Ann. §4507.40. The licensee must be given 20 days advance notice of the suspension, during which time he may petition the municipal court for a hearing. Ohio Rev. Code Ann. §4507.40(k). At the hearing, the court decides whether the license should be suspended "upon the record certified by the registrar and any additional relevant, competent, and material evidence" submitted by either the licensee or registrar. Ohio Rev. Code Ann. §4507.40(o).

Colorado requires a full evidentiary hearing prior to the discretionary suspension of a license. The department has

authority to suspend a license based on the number of "points" accumulated. Colo. Rev. Stat. §42-2-123. However, "No suspension . . . shall be made until a hearing has been held in accordance with the provisions of this section." Colo. Rev. Stat. §42-2-123(1)(d). The Colorado prior hearing is identical to the Illinois post-revocation hearing, including subpoena power and testimony under oath. Compare Colo. Rev. Stat. §42-2-123(1) with Ill. Rev. Stat. Ch. 95½, §2-118(c).

California provides that when the department "proposes to revoke or suspend the driving privilege of [a] person," it must give the licensee "notice and an opportunity to be heard . . . before taking the action." Cal. Veh. Code §13950. The licensee has the choice of a formal or informal hearing. Cal. Veh. Code §14100. A copy of the form Department of Motor Vehicles Notice of Proposed Action is reproduced herein as Appendix D.

South Dakota authorizes the Department of Public Safety to suspend a license "only after an opportunity for hearing" when the licensee, *inter alia*:

> Appears from the records of the department to be an habitually reckless or negligent operator of a motor vehicle or to have repeatedly violated any of the state traffic laws [and/or] municipal ordinances. . . . S.D. Compiled. Laws Ann. §32-12-49.

Although the Iowa statute facially allows suspension of a license without preliminary hearing, the licensee must be given "twenty days advance notice of the effective date of the suspension." During that time he may petition for judicial review, which "shall operate to say the suspension pending the determination by the district court." Iowa Code §321.210.

The Michigan statute requires the licensing authority to give prior notice and hearing to the licensee before suspending or revoking his license when, *inter alia*, the basis of the suspension is an accumulation of points based upon a statutory schedule. Mich. Comp. Laws §257.320. The Notice of Driver Improvement Hearing sent to the licensee provides:

> The purpose of this hearing is to discuss your driving performance and to determine whether licensing action is appropriate. You will have an opportunity to review your record, discuss your driving performance, and present related information.

A copy of the said notice is reproduced herein at Appendix E.

North Dakota authorizes a discretionary suspension of a license only "after hearing, upon proof by a fair preponderance of the evidence . . ." N.D. Cent. Code §39-06-32.

Virginia provides for the suspension or revocation of a license under two separate statutes. Va. Code §46.1-387 is the "habitual offender" act and provides for suspension or revocation of a license only after a judicial determination. See discussion above at p. 32. Va Code §46.1-430 provides for the discretionary suspension of a license "after the hearing . . . conducted by the Commissioner" for specified charges. The notice of the hearing shall contain:

> (1) A specific statement of the alleged offense or offenses or other grounds for suspension or revocation of the license, including the date, time and place thereof when applicable;
>
> (2) The date, time and place of the hearing;
>
> (3) The names and addresses of all known witnesses whose testimony is proposed to be taken at the hearing;
>
> (4) As to any record of conviction of any offense which is to be offered as evidence, the date of such conviction and the court in which the same was had.

(b) If these requirements are complied with it shall be sufficient regardless of whether or not the licensee appeared and regardless of whether or not the notice was ever received. (Va. Code §46.1-431)

The hearing shall be conducted in accordance with the rules of evidence, including the right to cross-examine adverse witnesses. Va. Code §46.1-433.

Another group of states has recognized that the problem of poor drivers cannot be cured merely by suspension or revocation for a given length of time. They provide hearings or conferences prior to suspension or revocation wherein an opportunity for counseling and rehabilitation is provided to the licensee.

Kentucky authorizes its licensing department to suspend a license with or without a prior hearing under a variety of circumstances. Ky. Rev. Stat. §186.570, but the licensing department has opted to adopt administrative procedures which protect the interest of the licensee in maintaining his driving privileges by requiring that the individual receive a hearing prior to suspension. Bureau of Vehicle Regulation No. 9. The state's interest in improving the driving habits of its licensees is promoted by regulations 4(1) through 4(3). These detailed regulations require the individual to attend an interview with a "driver improvement officer for the purpose of seeking a solution to his errant driving behavior." Bureau of Vehicle Regulation No. 4(1). This conference occurs when the individual begins to accumulate significant numbers of penalty points. The driver improvement officer has the authority to require the individual to attend a driver improvement clinic and, as an additional incentive, upon completion of the clinic, some of the points previously accumulated are removed from the driver's record. A copy of the Kentucky regulations and the driver improvement interview notice are reproduced herein as Appendix F.

The Kentucky statute and administrative procedure demonstrates an approach which recognizes governmental interests in highway safety by encouraging rehabilitation while retaining authority to remove poor drivers. This sophisticated approach recognizes that mere suspension or revocation, by itself, for specified periods of time is not an adequate response to the problem of highway safety.

The State of Washington has also adopted such an administrative driver rehabilitation procedure in conjunction with its prior hearing statute. Wash. Rev. Code §§46.20.291 and 46.20.322 provide for prior hearings. Unnumbered internal administrative procedures discuss the driver rehabilitation aspects of the program. As stated in these regulations:

> A common misconception is that the department arbitrarily suspends a driver's license on the basis of point accumulation. Normally, the driving privilege is not suspended unless the driver has had an opportunity for at least one personal contact with a departmental representative. It is felt that arbitrary suspension is ineffective as a means of driver rehabilitation. Driver Improvement clinics of various types are made available when experience and research indicates that they are worthwhile. This is part of a continuing effort to help the problem driver correct his driving before he gets to the point of being suspended.

This policy is implemented in the Washington regulations as follows:

> The purpose of the interview contact is to point out to the driver the consequences that can stem from having a poor driving record. Younger drivers who have a higher likelihood of driving problems because of aggressive driving behavior are given an opportunity to identify the causes of their driving errors and outline methods of correcting them. Older drivers

who normally have a higher likelihood of being preoccupied while driving are shown a technique to overcome that preoccupation. All drivers attending interviews have a control status period of time. If the driver continues violating during that control period, a follow-up action is taken if the driver is on probation, suspension of the license is the next action taken.

The Washington regulations are reproduced herein as Appendix G.

CONCLUSION

For the reasons stated herein, the appellee respectfully requests that this Court affirm the finding and order of the district court.

Respectfully submitted,

ALAN M. FREEDMAN
RICHARD J. HESS
ALLEN L. RAY
Legal Assistance Foundation
Mid-South Law Office
4655 South Michigan Avenue
Chicago, Illinois 60653
(312) 538-0733

JAMES O. LATTURNER
JERROLD OPPENHEIM
Legal Assistance Foundation
Uptown Legal Services
4753 North Broadway
Chicago, Illinois 60640
(312) 769-1015

Attorneys for Appellee

APPENDIX

APPENDIX A

Maryland Department of Transportation
MOTOR VEHICLE ADMINISTRATION
6601 RITCHIE HIGHWAY, N.E.
GLEN BURNIE, MARYLAND 21062

Harry R. Hughes
Secretary
Elmer J. Johnson
Administrator

CERTIFIED MAIL

Notice Date

NOTICE OF REVOCATION

As required by the Vehicle Laws of Maryland, Art. 66½ Sec. your driving privilege in this state will be Revoked on as a result of

A written request for a hearing, made within Fifteen (15) days of this notice, will delay the revocation until a hearing is concluded.

In the event a hearing is not requested, your privilege will be Revoked and your Maryland driver's license must be returned to this office on the revocation effective date.

An application for reinstatement will be issued on written request from the date your license is received; however your driving privilege cannot be restored until the revocation period has terminated.

SAMPLE COPY

Driver Improvement Section

SIGN AND RETURN THIS LETTER WITH THE APPLICABLE SECTION CHECKED:

☐ I hereby request a hearing.

☐ I waive my right to a hearing. I am returning my license herewith. _____
SIGNATURE

App. 2

APPENDIX B

STATE OF WYOMING
THE DEPARTMENT OF REVENUE AND TAXATION
2200 Carey Avenue
Cheyenne, Wyoming 82002
4/11/74

NAME
AND
ADDRESS.

Driver License No. 1573253061
Class C Type
Date of Birth JUNE 7,1951
3190

ORDER OF SUSPENSION OF DRIVER LICENSE

Your Wyoming driver license file shows the following convictions for moving traffic violations since the beginning of SEPTEMBER, 1974.

9/07/73	SIGNS & CONTROL DEVICES	CASPER
10/14/73	TURNS	CASPER
7/30/73	SPEEDING	CASPER
2/10/74	SIGNS & CONTROL DEVICES	CASPER

The Motor Vehicle Division finds that the above listed convictions show you to be an habitually reckless or negligent driver and that your driving privileges should be suspended for a period of ____ _____.

It is, therefore, ordered by the Motor Vehicle Division, of The Department of Revenue and Taxation, State of Wyoming, that driver's license no. 1573253061 issued to the above named person is hereby suspended for a period of _____ commencing 20 days after the date of this order on May 3, 1974.

Demand is hereby made for the surrender to the Motor Vehicle Division of your driver's license ow

You may, within 20 days of the date of this Order, demand a hearing upon this matter. Such demand shall be in writing, addressed to the Motor Vehicle Division, 2200 Carey Avenue, Cheyenne, Wyoming 82002. Such demand shall stay the suspension until all administrative or judicial review of this matter is completed. Such hearing, if demanded, shall be before The Department of Revenue and Taxation Hearing Examiner in the County of your residence.

DATED at Cheyenne, Wyoming, this ELEVENTH, day of APRIL, 1974.

_____
Director
Motor Vehicle Division

Limited driving privileges can be granted on a showing of sufficient cause. Application should be made in writing to the Motor Vehicle Division.

App. 3

APPENDIX C

DIC-18 (Rev. 6/74)

PETITION FOR ADMINISTRATIVE HEARING
Article 6687b, R.C.S., Section 22

TEXAS DEPARTMENT OF PUBLIC SAFETY
vs
_____

DOCKET NO. _____
BEFORE THE JUDGE OF THE _____ COURT,
_____, COUNTY, TEXAS.

TO THE HONORABLE JUDGE:

NOW comes the State of Texas, acting by and through Wilson E. Speir, Director of the Texas Department of Public Safety, hereinafter called Plaintiff, and files this its first original petition herein:

COMPLAINING OF _____, hereinafter called Defendant, who resides in _____, _____, County, Texas, and for its allegations and cause of action against said defendant will allege and state the following matters and facts, to-wit:

THAT, defendant was issued _____ License No. _____ on the _____ day of _____, 19 ____, by the Texas Department of Public Safety;

THAT, defendant is an habitual violator of the traffic law, to-wit:

THAT, defendant has four (4) or more convictions arising out of different transactions in a consecutive period of twelve (12) months, or seven (7) or more convictions arising out of different transactions within a period of twenty-four (24) months, such convictions being for moving violations of the traffic laws of this State or its political subdivisions.

WHEREFORE, premises considered, plaintiff prays the Judge for an affirmative finding in his favor and judgment authorizing the suspension of defendant's aforementioned license and defendant's privilege to operate a motor vehicle in the State of Texas for a period of time not to exceed one year.

Wilson E. Speir

Wilson E. Speir, Director
Texas Department of Public Safety

BE IT REMEMBERED that on the _____ day of _____, 19 ____ came on for hearing and was heard in the above entitled and numbered cause.

WHEREUPON the Judge is of the opinion and so finds that the law and the facts are with the plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff do have and recover of said defendant an affirmative finding, as prayed for in the petition, and that defendant's _____ License No. _____ and driving privileges be suspended for a period of _____ months as provided in Article 6687b, R.C.S., Section 22.

_____, JUDGE
_____, COURT
_____, COUNTY,
STATE OF TEXAS

App. 4

STATE OF TEXAS I

COUNTY OF TRAVIS I

Pursuant to the authority contained in Article 3731a, V.C.S., and Section 3 of Article 6701h, V.C.S., I, John H. Grant, do hereby certify that I am a deputy c[illegible] of driver records of the Driver and Vehicle Records Division of the Te[illegible]ment of Public Safety.

This is to further certify that notices of convictions for the following moving traffic law violations and incidents of motor vehicle accident involvement have been received and recorded, along with official action by the Department of Public Safety, in the computer records of
as described hereinabove:

In Testimony Whereof, I hereunto set my hand and affix the Seal of the Department of Public Safety of the State of Texas. Done at my office, in the City of Austin, this_____day of_____ A.D., 19____.

John H. Grant, Manager
Driver Improvement and Control Bureau
Driver and Vehicle Records Division
Texas Department of Public Safety

DIC-116

App. 5

APPENDIX D

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES
DIVISION OF DRIVERS LICENSES

NOTICE OF PROPOSED ACTION, GROUNDS THEREFOR, AND OF OPPORTUNITY TO BE HEARD.

(Name and address of licensee)

Driver's License or File Number _____

Field File _____

☐ cc: Guarantor

Our records show that

(Grounds for hearing)

You are hereby notified that because of such record, this Department proposes to suspend or revoke your driving privilege or to place your privilege on probation as provided in Sections 12809, 13359, 13950–52 of the Vehicle Code.

You are entitled to a hearing to present any evidence, oral or written, as to why the Department should not take the proposed action. You have the choice of a formal or informal hearing. In either type of hearing, you may present any evidence on your behalf. You are not required to be represented by legal counsel, but your attorney may be present if you wish. In the formal hearing, a complete written record is made of the entire proceedings and is available for review.

An informal hearing has been scheduled by the Department of Motor Vehicles, to be held at

A Driver Improvement Analyst will act as referee at the informal hearing.

A formal hearing, if requested, will be scheduled in place of the informal hearing.

You may respond to this notice either through appearance at the informal hearing or by demanding a formal hearing prior to the date of the informal hearing. Failure to respond to this notice is a waiver of the right to a hearing, and the Department may take action without hearing as authorized in Section 14103 of the Vehicle Code. Please bring to the hearing any unexpired driver's license which has been issued to you.

DIVISION OF DRIVERS LICENSES
Sacramento, CA 95812

CERTIFICATE OF MAILING

The undersigned hereby certifies that, on the date below, he or she, as an officer or employee of the Department of Motor Vehicles, deposited in the United States Mail, at Sacramento, a copy of the paper to which this is affixed, in an envelope, with postage prepaid, addressed to the person named in the paper, at his or her last address as shown by the records of the Department.

_____ Date

_____ Officer or Employee of Department

DL 1080 (REV. 12-79)

APPENDIX E

Michigan Department of State
BUREAU OF DRIVER IMPROVEMENT
LANSING, MICHIGAN 48918

NOTICE OF DRIVER IMPROVEMENT HEARING

From records reported to this office, it appears that:

For the above stated reason you are required to appear for a hearing with a driver analyst on:

Date _____ Time _____

Place

The purpose of this hearing is to discuss your driving performance and to determine whether licensing action is appropriate. You will have an opportunity to review your record, discuss your driving performance, and present related information.

If you are under 18 years of age, a parent or guardian should appear with you.

If medical statement forms are attached, please have them completed and present them at the hearing.

You may be given a road test. This means you will need a motor vehicle in safe driving condition, proper vehicle registration and valid proof of insurance.

Dated this date _____

Paul Bertram

Paul Bertram, Director
Re-examination Division
Bureau of Driver Improvement

YOUR FAILURE TO APPEAR WILL NOT PREVENT THE DEPARTMENT FROM REVIEWING YOUR RECORD AND TAKING APPROPRIATE ACTION CONCERNING YOUR DRIVING PRIVILEGE. SUCH ACTION MAY INCLUDE SUSPENSION OR REVOCATION.

Authority granted under Act No. 300 of the Public Acts of 1949, as amended.

DI-1 - (7/79)

APPENDIX F

DEPARTMENT OF TRANSPORTATION

Bureau of Vehicle Regulation

Relates to KRS 186.570

Pursuant to KRS 13.082

Necessity and Function: This regulation is the so-called "point system" whereby each traffic violation conviction is assigned a certain number of points, according to the seriousness of the offense, as determined by accident-cause statistics. Certain offenses have proven so dangerous that they, along with certain license violations, are made cause for suspension periods rather than point accumulation. The purpose of this is to establish a criterion whereby the discretion allowed in determining the "habitually reckless or negligent driver" or the "serious violation" will not be exercised arbitrarily and capriciously, but each license holder will be treated like every other one, and each will know or can determine his "point" status at any given time.

Supersedes: Psfty-DI-4, Psfty-DI-5-2, Psfty-DI-9, Psfty-DI-10 and Psfty-DI-11

Section 1. To assist the Department of Transportation in making a determination that a person is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws for the purpose of denying, suspending, or revoking that person's license in accordance with KRS 186.570 a schedule of penalty points shall govern. Value points for the different classifications of moving hazardous violations, or a suspension period of certain named violations, shall be assessed as

set out in Sections 2 and 3 of this regulation for all drivers. Points shall be assessed or suspensions invoked for convictions, forfeiture of bail, or payment of fines, with or without a court appearance, for the enumerated offenses regardless of whether the conviction is received from a court of competent jurisdiction within the Commonwealth of Kentucky or in any other jurisdiction (except for out-of-state speeding offenses). Information regarding convictions may be secured from any official sources or records available to public or departmental inspection. Complete records of suspensions and point system assessments shall be maintained in the Department of Transportation.

Section 2. Conviction for any one of the following serious violations of the motor vehicle laws shall be cause for suspension for the period of time indicated:

Racing	90 days
Speeding 26 MPH or more over limit	90 days
Attempting to Elude Law Enforcement Officer by use of Motor Vehicle	90 days

Section 3. Conviction for any one of the following Moving Hazardous Violations shall be cause for assessment of the penalty points indicated:

Speeding 15 MPH or less over the limit	3 pts.
Speeding 16 MPH or more, but less than 26 MPH, over the limit	6 pts.
Improper passing	5 pts.
Reckless Driving	4 pts.
Driving on Wrong Side of Road	4 pts.
Following Too Close	4 pts.
Failure to Yield to Emergency Vehicle	4 pts.
Changing Drivers in a Moving Vehicle	4 pts.
Vehicle Not Under Control	4 pts.
Stop Violation (electric signal, railroad crossing, stop sign)	3 pts.
Failure to Yield	3 pts.

Wrong Way on One-Way Street	3 pts.
Too Fast for Conditions	3 pts.
Too Slow for Conditions	3 pts.
Improper Start	3 pts.
Improper Driving	3 pts.
Careless Driving	3 pts.
Improper Lane Usage	3 pts.
Failure to Illuminate Headlights	3 pts.
Failure to Dim Headlights	3 pts.
Any other Moving Hazardous Violations	3 pts.
Commission of a Moving Hazardous Violation which involves an Accident	6 pts.
Combination of Two or More Moving Hazardous Violations in any one occurrence	6 pts.

Section 4. (1) On the accumulation of six (6) or more points against any driver the Department of Transportation may send a letter to the address shown on his driver license record that will require said driver to be interviewed by a Driver Improvement Officer for the purpose of seeking a solution to his errant driving behavior. Failure to report for the interview shall be cause for the Department to suspend the person's driving right for a period of not less than thirty (30) days.

(2) After this interview, the Department may require the driver to attend a Driver Improvement Clinic approved by the Department of Transportation.

(3) Upon evidence to the Department that a valid license holder has successfully completed this Clinic, a four (4) point credit shall be given on the driver record of those who voluntarily complete the Driver Improvement Clinic after the effective date of this regulation. This subsection shall not apply when a driver is required to attend the Driver Improvement Clinic as a condition of his probation.

(4) No driver shall be permitted to attend this Clinic until two (2) years have elapsed following the date of com-

pletion of a previous clinic for the reduction of points or reduction of a suspension period.

Section 5. (1) Upon the accumulation of twelve (12) points by any driver within a period of two (2) years, the Department may suspend the operating right of such driver for a period of six months for the first such accumulation of twelve (12) points, one year for the second such accumulation of twelve (12) points, and two years for any subsequent accumulation of twelve (12) points within the two year period.

(2) For any violation for which the suspension of the driving privilege is six months or less for the first offense, the second conviction of a similar offense shall result in a suspension period of not less than one year, and any subsequent conviction for any similar offense not less than two years.

(3) Provided the driver is eligible for "probation", the Department may waive the remainder of a driver's suspension period after he has served one-half of it. Upon this waiver, the Department shall place the driver on "probation" as outlined in Section 6(2) of this regulation, for two times the amount of time remaining on the suspension period.

Section 6. (1) Any driver who accumulates twelve (12) points or more within a period of two years, or who is convicted of any offense that could result in a discretionary suspension, may be placed on "probation" in lieu of suspension.

(2) A driver receiving a conviction from a moving hazardous violation from any court outside the boundaries of Kentucky which may result in a suspension shall be offered a hearing prior to any suspension of his driving right.

(3) "Probation" for the purpose of this regulation means that upon any additional future conviction for a moving violation with or without court appearance, or upon failure to successfully complete the Driver Improvement Clinic, the driver shall have his driving right in Kentucky suspended for the period of time outlined in Section 5 (1) and (2). In the situation where a driver has been convicted of driving under the influence of intoxicants in a foreign jurisdiction, probation may include successful completion of the alcohol driver education course in lieu of terms previously stated.

(4) Once a driver has been placed on "probation" by the Department, he shall not be considered for probation again until a lapse of two years from the ending date of any previous probation period granted, whether served or not.

Section 7. Any driver who holds a valid driver's license from another licensing jurisdiction and desires to become a valid license holder in Kentucky, upon establishing residency in this state, but has a driving record of two or more convictions for moving violations within the preceding two years, may be considered for an operator's license in Kentucky. However, such person must not be under suspension or revocation by any state at the time of his application in Kentucky. This driver applicant may be required to appear for an interview, as outlined in Section 4 (1), and may be required by the Department to successfully complete a Driver Improvement Clinic, as outlined in Section 4 (2), as a prerequisite to obtaining a permanent Kentucky Operator's license.

Section 8. Whenever a conviction report is used for a suspension or probation, it shall never be used for an additional suspension. It may be used to show that the driver has previously been suspended on his record.

Section 9. No person's driving right will be suspended under any section of this regulation without his first being offered a hearing.

ADOPTED: .....

Approved as to form and legality:

.....

Bruce K. Davis, Attorney

TD 94-2
Rev. 4-73

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF TRANSPORTATION
FRANKFORT, KENTUCKY 40601
BUREAU OF VEHICLE REGULATION
O. B. ARNOLD
COMMISSIONER

JOHN C. ROBERTS
SECRETARY

JULIAN M. CARROLL
GOVERNOR

Information has been received that you have violated the Motor Vehicle Laws to the extent that your right to operate a motor vehicle could be suspended.

In accordance with the authority vested in the Department of Transportation by Chapter 186.400, [illegible].570, and the Kentucky Point System, you are hereby direct[illegible]o appear at the:

The Driver Improvement Officer will have your driving record and will be able to answer any questions that you may have. If you keep your appointment, he will do everything within his power to help you retain your right to drive.

SHOULD YOU FAIL TO APPEAR, YOUR RIGHT TO OPERATE A MOTOR VEHICLE WITHIN THIS STATE WILL BE WITHDRAWN.

Authorized by the Director
Division of Driver Licensing
Phone (502) 564-6800

APPENDIX G

DRIVER IMPROVEMENT PROGRAM

ALCOHOL CONTROL—All drivers who have two citations or collisions on their driving record, with an indication that they consumed intoxicating alcohol previous to the incident, are scheduled for the sessions. During the course of the session they discuss information that related to blood alcohol level, risk of collision and penalties for further infractions. Alternatives to drinking and driving are also explored. At the conclusion of the interview the driving privilege for each driver attending is placed on a 24 month probationary status.

BEHAVIORAL ANALYSIS—Drivers between the ages of 16 and 30 who accumulate four moving citations in a 12 month period or five in a 24 month period are scheduled for this program. The session is designed to inform drivers about the consequences that may arise if their violation pattern continues. Factors such as collision risk, financial implications and inconvenience are discussed. Drivers are also given the opportunity to identify the causes of their driving errors and to outline methods that they will use to eliminate those errors in future driving. At the conclusion of the interview, all drivers are formally placed on a 6-month probationary status.

HABITUAL OFFENDER—The Habitual Offender Law which became effective August 9, 1971, stipulates that certain drivers may be declared "habitual offenders" by Superior Court. Upon such a finding by the court, the Department issues an order of license revocation for a five year period. To qualify for such action the driver must accumulate either 20 moving violations within a five year period, or three "mandatory" convictions. These mandatory convictions consist of: drunken driving, hit and run, negligent homicide and driving while suspended. The driver who is revoked under terms of the Habitual Offender Law may petition the Department for reconsideration of the revocation after a two year period.

IMPLIED CONSENT—Any driver who operates a motor vehicle on the public highways in Washington is deemed to have given consent to take a breathalyzer test. In order for the provisions of this law to be invoked, certain conditions must be met:

a. The driver must have been arrested.

b. The officer must have reasonable grounds to believe the driver operated or was in physical control of the motor vehicle upon the public highways while under the influence of intoxicating liquor.

c. He must advise the driver that his refusal to take a breathalyzer test will result in revocation or denial of his driving privilege.

d. The driver must be advised of the right to take additional tests administered by a qualified person of the driver's choosing and at the driver's expense.

e. It must be substantiated that the driver did in fact refuse to take the test.

If these conditions are met and the arresting officer submits a notarized affidavit to the effect that the above conditions were met, an order revoking the driving privilege for six months is issued. If the driver feels that the above conditions were not met, he may request an administrative hearing to determine the matter. If the departmental hearing results in a finding against the driver, he may file notice of appeal with Superior Court within 30 days after he receives the new revocation order.

MEDICAL RESTRICTION PROGRAM—If there is any indication that a driver is subject to a mental or physical condition that might impair driving ability, documentation of the condition in the form of a Certificate or Physical Examination must be submitted. On the certificate, the physician indicates the severity of the condition and registers his opinion on whether the driver should have further examinations on a periodic basis in order to retain a license. If his physical condition warrants it, the driver may be required to submit such certificates on a continuing basis.

NARRATIVE DRIVING—Drivers who are age 31 or older, who accumulate four moving citations in a 12 month period or five in a 24 month period are scheduled for these sessions. Because of the high probability of pre-occupation or poor seeing habits being a factor in these drivers performance, they are shown and given practice in a technique referred to as "Narrative Driving". At the conclusion of the interview all drivers are placed on a 6 month probationary status.

RE-EXAMINATION AND SPECIAL EXAMINATION—Drivers are selected for re-examination in a number of ways. Often they are referred to the Department of courts and enforcement agencies. On occasion members of the family or acquaintences will document the need for retesting and a large number of re-examinations are generated within the Examining Division as the result of their contact with drivers who wish to renew their license. The re-examination is conducted for the purpose of reassuring the drivers and the Department that anyone who holds a Washington license has a satisfactory ability to operate a motor vehicle in accordance with safety standards and legal guidelines. If a driver cannot satisfactorily complete re-

examination, they are referred for a special examination. Quite often the driver who cannot qualify on a standard re-examination can retain a portion of their driving privilege through use of an area or equipment restriction.

DEPARTMENT OF MOTOR VEHICLES
STATE OF WASHINGTON

POINT SCHEDULE

Each bail forfeiture or court conviction for a traffic violation is placed on the driver's record and assigned a certain number of points according to the point schedule. When the violator has accumulated 12 or more points within a 12-month period, a warning letter is sent.

Beyond the warning letter stage, a probability of collision involvement becomes more significant than point accumulation in identifying problem drivers. Any driver who accumulates four or more record entries (record entries consist of either citations or collisions) in a 12-month period is scheduled for a conference with a Driver Improvement Analyst. The interview is scheduled because any driver with four entries represents a very high collision potential, and in many cases has demonstrated that potential. The purpose of the interview contact is to point out to the driver the consequences that can stem from having a poor driving record. Younger drivers who have a higher likelihood of driving problems because of aggressive driving behavior are given an opportunity to identify the causes of their driving errors and outline methods of correcting them. Older drivers who normally have a higher likelihood of being preoccupied while driving are shown a technique to overcome that preoccupation. All drivers attending interviews have a control status such as probation placed on their record for a stated period of time. If the driver con-

tinues violating during that control period, a follow-up action is taken if the driver is on probation, suspension of the license is the next action taken.

A common misconception is that the department arbitrarily suspends a driver's license on the basis of point accumulation. Normally, the driving privilege is not suspended unless the driver has had an opportunity for at least one personal contact with a departmental representative. It is felt that arbitrary suspension is ineffective as a means of driver rehabilitation.

Driver Improvement clinics of various types are made available when experience and research indicates that they are worthwhile. This is part of a continuing effort to help the problem driver correct his driving before he gets to the point of being suspended.

FOR ARGUMENT

Supreme Court, U. S.
FILED
FEB 25 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1513

ALAN J. DIXON, SECRETARY OF STATE OF ILLINOIS,

Appellant,

vs.

DENNIS N. LOVE,

Appellee.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

REPLY BRIEF AND ARGUMENT FOR APPELLANT

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
160 North LaSalle Street, Suite 900,
Chicago, Illinois 60601 (793-3500),
Attorney for Appellant.

PAUL J. BARGIEL,
PATRICIA ROSEN,
STEPHEN R. SWOFFORD,
MARY STAFFORD,
Assistant Attorneys General,
160 North LaSalle Street, Suite 800,
Chicago, Illinois 60601 (793-5635),
Of Counsel.

Printed by Authority of the State of Illinois—2-24-77—70

TABLE OF CONTENTS

PAGE

ARGUMENT:

The Revocation Or Suspension Of A Driver's License Without A Preliminary Hearing, Based Upon The Number Of Traffic Violations For Which A Driver Has Been Convicted, Comports With The Principles Of Due Process Of Law 1

CONCLUSION 18

TABLE OF AUTHORITIES

Cases

Bell v. Burson, 402 U.S. 535, 29 L.Ed.2d 90 (1971) .. *Passim*

Boddie v. Connecticut, 401 U.S. 371, 28 L.Ed.2d 113 (1971) 11

Cafeteria Workers v. McElroy, 367 U.S. 886, 6 L.Ed.2d 1230 (1961) 12

Fuentes v. Shevin, 407 U.S. 601, 32 L.Ed.2d 556 (1972) 5, 10, 11, 14

Matter of Horodner v. Fisher, 38 N.Y.2d 680 (1976) 6

Mitchell v. W. T. Grant Co., 416 U.S. 600, 40 L.Ed.2d 406 (1974) 11, 12

North Georgia Finishing, Inc. v. Di-Chem, 419 U.S. 601, 42 L.Ed.2d 751 (1975) 6

Rios v. Cozens, 7 C.3d 792, 103 Cal.Rptr. 299, 499 P.2d 979 (1972) 10

Statutes and Rules

Illinois Motor Vehicle Code, Ill. Rev. Stat. (1975), Ch. 95½ ..... *Passim*

Law Review Articles

Freedman, Summary Action by Administrative Agencies, 40 Chicago U.L. Rev. 1 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1513

ALAN J. DIXON, SECRETARY OF STATE OF ILLINOIS,

Appellant,

VS.

DENNIS N. LOVE,

Appellee.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

REPLY BRIEF AND ARGUMENT FOR APPELLANT

THE REVOCATION OR SUSPENSION OF A DRIVER'S LICENSE WITHOUT A PRELIMINARY HEARING, BASED UPON THE NUMBER OF TRAFFIC VIOLATIONS FOR WHICH A DRIVER HAS BEEN CONVICTED, COMPORTS WITH THE PRINCIPLES OF DUE PROCESS OF LAW.

Regulation of vehicular traffic has been a constant source of difficulty throughout modern history. Today, the automobile has become practically a necessity in the lives of the American people. At the same time, the sheer volume of automobiles traveling our highways has

multiplied the problem many-fold.[1] It is, therefore, imperative that the states have broad and pervasive authority to regulate vehicular traffic in order to protect the health and safety of their citizens. Consequently, the states, in the exercise of their police power, have an unquestioned right to limit the use of their highways to individuals who do not present a danger to the public. While it is undisputed that a driver's license, once issued, cannot be taken away without due process of law, due process does not require a preliminary hearing in every instance.

Although the traffic violations which underlie a suspension or revocation under § 6-206(a)2 are less serious in nature than those for which revocation is required under § 6-205, a driver who commits 3 or more moving violations within 12 months has a driving record which indicates that it is probable that he poses a threat to public safety.

During 1975 there were 27,500,000 accidents reported in the United States. Approximately 89% of these accidents were caused by the improper driving of the motorists involved, the most common causes being speeding and failure to yield the right of way.[2] Consequently, it cannot be disputed that a motorist who is convicted of three or more of such traffic offenses during a 12-month period has demonstrated a disrespect

[1] The National Safety Council estimates that during the year 1975 motor vehicle mileage traveled in the United States was 1.33 trillion. (1976 Edition, *Traffic Accident Facts*, National Safety Council.)

[2] 1976 Edition, *Traffic Accident Facts*, National Safety Council. In most accidents, factors are present relating to the driver, the vehicle, and the road. The interaction of these factors often sets up the train of events culminating in the mishap. The Improper Driving Table (below) relates just to the driver and shows the principal kinds of improper driving that were factors in accidents.

(Footnote continued on following page)

for the traffic laws to such a degree that he poses a danger to the safety of other persons on the highways. Under such circumstances, the summary *ex parte* suspension or revocation of driving privileges is warranted.

Furthermore, an examination of the "Illinois Offense Violation Table" promulgated by the Secretary of State indicates that most summary suspensions for minor traffic violations are for a relatively short period of time. Part IV of the table indicates the number of points used as a basis in determining whether an order of revocation or suspension is to be entered and the period of suspension:

A. 110 points or more—revocation
B. 100-109 points—12 mo. suspension
C. 90-99 points— 9 mo. suspension
D. 75-89 points— 6 mo. suspension
E. 45-74 points— 3 mo. suspension
F. 20-44 points— 2 mo. suspension
G. 10-19 points— 1 mo. suspension

[2] *continued*

Improper Driving Reported in Accidents, 1975

Kind of Improper Driving	Fatal Accidents			Injury Accidents			All Accidents*		
	Total	Urban	Rural	Total	Urban	Rural	Total	Urban	Rural
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Improper driving	76.9	84.7	75.2	85.3	88.6	82.3	89.0	91.1	85.2
Speed too fast†	31.1	26.3	32.0	21.8	15.7	27.0	20.0	12.7	33.5
Right of way	15.7	29.5	12.7	25.5	34.3	17.7	24.4	27.5	18.8
Failed to yield	*11.2*	*21.5*	*9.0*	*18.5*	*23.0*	*14.6*	*18.0*	*19.2*	*15.9*
Passed stop sign	*2.6*	*2.5*	*3.0*	*2.6*	*3.2*	*2.0*	*2.3*	*2.5*	*1.9*
Disregarded signal	*1.9*	*5.5*	*0.7*	*4.4*	*8.1*	*1.1*	*4.1*	*5.8*	*1.0*
Drove left of center	14.0	5.8	15.7	5.1	3.2	6.8	4.8	3.0	8.1
Improper overtaking	1.9	0.7	2.1	1.8	1.5	2.1	3.7	3.8	3.7
Made improper turn	0.9	1.9	0.8	2.7	3.4	2.2	4.8	5.4	3.8
Followed too closely	0.8	1.4	0.7	8.5	12.0	5.4	12.5	15.0	7.9
Other improper driving	12.5	19.1	11.2	19.9	18.5	21.1	18.8	23.9	9.6
No improper driving stated	23.1	15.3	24.8	14.7	11.4	17.7	11.0	8.9	14.8

Source: Reports of state and city traffic authorities, as follows: Urban—28 cities; Rural—14 states; Total—NSC estimates based on Urban and Rural reports.
*Principally property damage accidents, but also includes fatal and injury accidents.
†Includes "speed too fast for conditions".

Each traffic offense is listed in Part VII and is assigned a specific number of points, depending upon the severity of the offense.[3] Once three offenses have been committed within 12 months, the length of the suspension is determined by adding the number of points assigned to each offense. Unless a motorist has evidenced a blatant disregard for the traffic laws by committing several gravely serious traffic offenses, his driving privileges will be speedily restored to him. For example, a motorist who has been convicted of a failure to stop for a school bus, passing in a "no passing" zone and a failure to yield the right of way at an intersection, will merely be suspended for 3 months.[4]

A further examination of the "points" assigned to each specific offense reveals that a motorist's driving privileges will not be summarily revoked unless he has been convicted of 3 or more traffic offenses of a much more serious nature, which, therefore, pose a much greater danger to the public safety.[5] It is respectfully submitted that the State has the authority to summarily suspend or revoke driving privileges when a motorist has demonstrated careless driving habits which pose a danger both to himself and to others.

---

[3] For example, an individual convicted of three moving violations for speeding (1-10 mph over the limit in clear conditions) would receive a 2-month suspension:

1st offense	6pts
2nd offense	8pts
3rd offense	12pts
Total	20pts

[4] Failure to stop for school bus 20pts
Passing in "no passing" zone 20pts
Failure to yield at intersection 15pts
Total 55pts

[5] Three convictions for speeding in excess of 25 mph over the speed limit would result in a revocation.

Suspensions or revocations under § 6-206(a)3 are also based upon the number of "points" accumulated by a motorist as the result of convictions for offenses against traffic regulations. Rule 6-206(a)3 provides that,

> A person * * * who has accumulated sufficient points to warrant a second suspension within a 5 year period, may either be suspended or revoked by the Secretary of State, *based upon the number of points in his record. A person who has been suspended thrice within a 10 year period shall be revoked.* (emphasis added)

In the instant case, plaintiff's driving privileges were suspended in 1969 and again in 1970. On March 31, 1975, he was convicted of his third traffic offense in 12 months, which would result in a suspension under § 6-206(a)2. Because plaintiff's license had been suspended twice previously within ten years, the Secretary notified him that his license was revoked. This action was mandated by Rule 6-206(a)3.

A summary revocation of driving privileges under the aforesaid circumstances comports with the requirements of due process of law. An individual who has accumulated a sufficient number of points to have had his license suspended three times within ten years has demonstrated a disregard for the traffic laws and the safety of persons on the highways to such a degree that his continued operation of a motor vehicle poses a serious threat to public safety. This fact is recognized by Rule 6-206(a)3, which provides that a driver who has had his license suspended three times within ten years *"shall be revoked."*

There is no constitutional impediment to the temporary, *ex parte* suspension or revocation of driver's licenses under § 6-206 of Illinois Motor Vehicle Code. While it is true that *Bell v. Burson*, 402 U.S. 535, 29 L. Ed.2d 90 (1971); *Fuentes v. Shevin*, 407 U.S. 601, 32 L.

Ed.2d 556 (1972); and *North Georgia Finishing, Inc. v. DiChem*, 419 U.S. 601, 42 L. Ed.2d 751 (1975), held that an *ex parte* seizure of a property right without the opportunity for a prior hearing or other safeguards against mistaken repossession is violative of the Fourteenth Amendment, it is respectfully submitted that those decisions were predicated upon the absence of a fact which is present in the instant case. In the case at bar, suspension or revocation of driving privileges is based upon convictions for motor vehicle violations. Rule 6-206(a) defines "conviction",

> For the purpose of this Rule and its companion rules, a conviction is the final adjudication of "guilty" by a court of competent jurisdiction, either after a bench trial, trial by jury, plea of guilty, order of forfeiture, or default, as reported to the Secretary of State, and the Secretary of State is not authorized to look behind the conviction.

The hearings on the underlying convictions are judicially conducted hearings in compliance with all of the "other safeguards" required by law. Judicial hearings have been completed and individuals having been determined to lack "due respect for traffic laws and the safety of other persons upon the highway", the State is justified in summarily acting so as to deny, temporarily at least, the entrustment of a motor vehicle to those individuals.

In *Matter of Horodner v. Fisher*, 38 N.Y.2d 680 (1976) the court upheld the constitutionality of Section 510 of the Vehicle and Traffic Law, which provided for mandatory revocation, without notice or hearing, of the license of a driver who had been convicted of three speeding violations within an eighteen-month period. The court recognized that the motorist had been afforded a hearing on each of the underlying convictions:

> * * * [A]s points are accumulated the driver is informed and aware of the consequences thereof. Each conviction, for which points are given, has its due process elements. The policy served by such a statute is to help assure that recidivist traffic offenders are prohibited from traveling the highways. "The compelling public interest in removing from the highways those drivers whose records demonstrate unsafe driving habits outweighs the need for notice and hearing prior to the order to protect the individual against mistake" (citations omitted).

Similarly, in the instant case, the plaintiff has been afforded a hearing on each of the underlying convictions.

Summary suspensions under point systems are thus distinguishable from other *ex parte* seizures. In "point" cases, the administrative body has specific evidence indicating that the driver poses a danger to public safety. The suspension is founded on the final judgments of trials in which the motorist was given the opportunity to make a full presentation and to fully contest the allegations against him. Since individuals whose driver's licenses are suspended or revoked under § 6-206 are given the opportunity for full hearings in court prior to the revocation or suspension, these individuals have been afforded procedural due process prior to the loss of their licenses.

Plaintiff argues that a suspension or revocation under § 6-206 is discretionary and, therefore, the licensee must be given an opportunity for a hearing prior to suspension or revocation. (Appellee's Brief, pp. 15-19). While it is true that the action of the Secretary under § 6-206 is pursuant to a statutory grant of discretionary authority, a further hearing prior to suspension or revocation is not required. The preliminary suspension

or revocation of driving privileges under this section is governed by the point system promulgated by the Secretary of State, which is uniformly applied to all licensed drivers. Rule 6-204 provides,

> *The Secretary of State*, in order to fully utilize conviction reports filed with him by the courts of this State and other States, *shall promulgate a point system as a standard in determining whether to suspend or revoke driving privileges and to determine the period of suspension or revocation.* The point system may take into consideration:
>
> 1. The severity of the offense and conviction;
> 2. the total number of offenses and convictions of a driver;
> 3. the penalty imposed by the court;
> 4. the recommendations, if any, of the court; and
> 5. prior suspensions or revocations,
>
> and *shall act as a standard for the Secretary in determining the fitness or unfitness of any person to safely operate any motor vehicle* in a manner conducive to the public safety and welfare, *and in determining whether such person has due respect for traffic laws and the safety of other persons upon the highway.* (Emphasis added).

The distinction between a suspension or revocation under this section and a revocation under the Secretary's mandatory authority (§ 6-205) is that under § 6-205 the Secretary is not authorized to restore the driving privileges of the motorist. The only authority which the Secretary has under § 6-205 is to issue a restricted driving permit where "undue hardship would result from a failure to issue such restricted driving permit." However, under § 6-206 the Secretary is authorized to hold a hearing (pursuant to § 2-118) and, at the conclusion of such hearing, the Secretary "shall either rescind or continue an order of revocation or shall substitute an order of suspension therefor; or, good cause

appearing therefor, rescind, continue, change or extend his order of suspension." (§ 6-206(c)3). Therefore, § 6-206 gives the Secretary discretionary authority to *restore driving privileges* after the motorist has been afforded a full evidentiary hearing pursuant to § 2-118 of the Code. Since this discretion is exercised only after the individual has been afforded an opportunity for a hearing, the action of the Secretary affords individuals due process of law.

Plaintiff argues that the decision of this Court in *Bell v. Burson, supra*, mandates the law to provide a hearing prior to the suspension or revocation of a driver's license. In *Bell* this Court examined Georgia's Motor Vehicle Safety Responsibility Act, which required that unless an uninsured motorist involved in an accident posted security to cover damages claimed by aggrieved parties, his vehicle registration and operator's license would be suspended. This Court held that, since "fault" was a significant element in the decision to deprive a motorist of his license, "before the State may deprive [him] of his driver's license and vehicle registration it must provide a forum for the determination of the question whether there is a reasonable possibility of a judgment being rendered against him as a result of the accident." (29 L. Ed.2d at 96). However, since suspensions or revocations under § 6-206 are based upon convictions for motor vehicle violations, the "fault" of the motorist has already been judicially determined—at least to a "reasonable possibility" which is all that *Bell* requires. Therefore, the procedures outlined by this section conform to the dictates of *Bell v. Burson.*

Additionally, it should be noted that the instant case is distinct from *Bell* in a crucial aspect. Here, the State's interest in protecting the public from an unsafe driver is much stronger than the State's interest in *Bell* in

protecting the public from a financially irresponsible driver. This fact was recognized by the court in *Rios v. Cozens*, 7 C.3d 792, 103 Cal. Rptr. 299, 499 P.2d 979 (1972),

> We observe, . . . that the primary purpose of the financial responsibility law is not to assure that careless drivers are denied the use of the highways—since the most grossly negligent drivers who can post security . . . may retain their licenses—but, rather, to afford monetary protection to those who suffer injury or property damage by virtue of the carelessness of financially irresponsible drivers. (citation omitted) We do not denigrate the desirability of making whole the victims of automobile accidents. But viewed in this economic context, the purpose of the statutes under consideration bears a remarkable relationship to prejudgment creditor's remedies and therefore does not justify a difference in treatment. (*Id.* 7 C.2d at 796).

In contrast to the financial responsibility statutes under scrutiny in *Bell* and *Rios*, suspensions or revocations under the Illinois statute cannot be viewed in an "economic context" because the primary purpose of the act is to protect the public safety by assuring "that careless drivers are denied the use of the highways." In *Fuentes v. Shevin, supra*, this Court recognized that there are "extraordinary situations" which justify postponement of notice and hearing until after seizure of the property interest:

> Thus, the Court has allowed summary seizure of property to collect the internal revenue of the United States, to meet the needs of a national war effort, to protect against the economic disaster of a bank failure, and to protect the public from misbranded drugs and contaminated food. (*Id.* 32 L. Ed.2d at 576)

The judicially recognized state concerns outlined in *Fuentes* are not significantly different from the concern of protecting the public from the hazards of drivers who

have been adjudged guilty of repeatedly violating motor vehicle laws.

In determining the "timing" of a due process hearing, this Court in *Bell* set out as a guideline:

> * * * [I]t is fundamental that except in emergency situations * * * due process requires that when a State seeks to terminate an interest such as that here involved, it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective. (402 U.S. at 542).

The later case of *Fuentes v. Shevin, supra*, reaffirmed the *Bell* standards and explained its concept of "emergency situations" where a prior hearing would not be required:

> There are "extraordinary situations" that justify postponing notice and opportunity for a hearing. *Boddie v. Connecticut*, 401 U.S. [371], at 379, 91 S.Ct. [780], at 786 [28 L.Ed.2d 113, 119 (1971)]. These situations, however must be truly unusual. Only in a few limited situations has this Court allowed outright seizure without opportunity for a prior hearing. First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance. * * * (*Id.* 32 L.Ed.2d at 575-577).

However, in *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 40 L. Ed.2d 406 (1974) this Court apparently abandoned the more definite "emergency situation" standard in favor of the more traditional "balancing of interests" test. In *Mitchell* this Court, quoting a pre-*Bell* case,

stated "[T]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." (40 L. Ed.2d at 415 quoting *Cafeteria Workers v. McElroy*, 367 U.S. 886, 6 L. Ed.2d 1230, 1236 (1961)). In *Mitchell* this Court upheld Louisiana's sequestration statute, which allowed a creditor to obtain a writ of sequestration against a debtor without a prior notice or hearing. It did so using the balancing test. Under the balancing test, the validity of an *ex parte* procedure will be determined by comparing the extent to which it may subject an individual to an arbitrary or wrongful deprivation of his property interests with the need of the State to use the procedure in order to further the interests of those it seeks to protect.

Irrespective of whether the "emergency situation" standard or the "balancing of interests" test is applied to the facts of the instant case, it is submitted that there is no constitutional impediment to a temporary *ex parte* suspension of the driving privileges of individuals who have been repeatedly convicted of motor vehicle violations, because these individuals pose a serious threat to the safety of all persons on the highways of the State.

Although summary action remains a striking exception to the due process requirement of a prior hearing, this Court has indicated that the State is justified in acting summarily, and hence does so without denying due process, "when the state's interest in acting promptly to protect the public against a serious threat to its safety, health, or economic well-being outweighs the individual's interest in having an opportunity to be heard before the state acts, perhaps in error, in ways that may cause him significant injury." Freedman, *Summary Action by Administrative Agencies*, 40 Chicago U. L. Rev. 1, 25-26. In the instant case, § 6-206

evidences a purpose to protect the public from persons concerning whom there is a reasonable ground to believe that the operation of a motor vehicle would create a risk of injury to themselves or others. Obviously, the interest of the State in protecting the public is substantial, and it is not unreasonable under the circumstances to permit summary action to suspend or revoke the driving privileges of such an individual pending a hearing upon a timely request. Furthermore, the risk of erroneous action is minor. The action of the Secretary is based upon conviction reports which are supplied by the courts. While it is true that clerical errors are possible, the risk of such error is small compared to the risk to the public of allowing such motorists to continue to drive pending administrative hearings. Therefore, the State is justified in summarily suspending or revoking driving privileges under § 6-206 of the Motor Vehicle Code.

Plaintiff contends, for the first time on appeal, that the Secretary was not authorized, even as an exercise of his discretion, to revoke his license to drive a commercial vehicle in his occupation. (Appellee's brief, pp. 37-40). This contention is predicated upon the fact that § 6-206(c)2 provides that a person's license to drive a commercial vehicle as an occupation "shall not be revoked or suspended unless five offenses were committed, at least 2 of which occurred while operating a commercial vehicle in connection with his regular occupation." This contention is without merit. Section 6-206(c)2 further provides that within 25 days after the mailing of a notice of suspension or revocation, such a driver may submit an affidavit stating "the number of offenses committed while driving a commercial vehicle in connection with his regular employment." Additionally, this section provides that the Secretary "shall thereupon send to said driver a permit to drive a commercial vehicle in his regular occupation." And, "Unless such affidavit is properly completed by the driver and

received by the Secretary of State within such 25-day period, such driver's license to drive any motor vehicle shall be revoked or suspended as set forth in the notice that was mailed pursuant to subparagraph 2 of paragraph (c) of this Section. * * * In lieu of the affidavit provided for above, the driver may request a hearing pursuant to Section 2-118 of this Act." Since, in the instant case, plaintiff did not file the required affidavit (nor did he request a hearing under § 2-118), the revocation of his driver's license pursuant to § 6-206(c)2 was authorized by statute.

Finally, even assuming that due process would otherwise require a preliminary hearing prior to the suspension or revocation of driving privileges, the danger to the public presented by a driver with a record of frequent traffic violations constitutes an emergency situation sufficient to obviate the need for such a hearing. In *Fuentes v. Shevin, supra*, this Court held that *ex parte* takings of property could be appropriate in "extraordinary situations" (*Id.* 407 U.S. at 91). The factors which must be present in such a situation are: 1) there must be an important governmental or general public interest; 2) a special need for very prompt action and 3) the state must keep "strict control over its monopoly of legitimate force: the person initiating the seizure [must be] a government official responsible for determining, under the standards of a narrowly drawn statute, that it [is] necessary and justified in the particular instance." (*Id.* 407 U.S. at 91).

A revocation under § 6-206(a)3 meets all of the aforesaid requirements. Unquestionably, there is an important governmental interest in removing recidivist traffic offenders from the highways. Traffic regulations are enacted in order to ensure the safety of the general public. Individual motorists who repeatedly violate these

regulations pose a threat to public safety which requires "very prompt action."

Plaintiff argues that there is no special need for prompt action because "the revocation is actually based on how the traffic violations are grouped and not their absolute number." (Appellee's brief, p. 25). While it is true that a motorist's license will not be suspended or revoked unless he has been convicted of at least three offenses within 12 months, this requirement does not obviate the need for prompt action. An individual who has committed three traffic offenses in such a short period of time has demonstrated careless driving habits sufficient to warrant summary action. Furthermore, the rules provide for the issuance of a probationary license to an otherwise careful driver who has been convicted of three minor traffic offenses within 12 months. Rule 6-206(a)2.1 provides:

> A person who has been convicted of three (3) or more offenses against traffic regulations, governing the movement of vehicles within a twelve (12) month period, may qualify for a probationary drivers license provided he meets the following requirements:
>
> 1. The petitioner's total point accumulation must not exceed 62 points.
> 2. The petitioner must have attained the age of 18 years.
> 3. The petitioner's drivers license and/or privileges must not have been previously revoked or suspended within the past 10 years, excluding suspensions or revocations pursuant to Section 6-206(a)13 of the Illinois Vehicle Code for violations of the Curfew Act and/or Section 11-501.1 of the Implied Consent Act.
> 4. The petitioner must complete and agree to all the provisions of form DL DC 118 or its superseding form titled "Petition for a Restricted Driving Permit and Probationary License" and submit the required fee and surrender his current valid drivers license.

Section 6-206(a)3 provides for *ex parte* revocations by the Secretary in two specific cases. First, if an individual's license has been suspended twice within 5 years and he has accumulated sufficient points (in excess of 110 pts.) to warrant a revocation. Second, where an individual's driving privileges have been suspended three times within ten years. Section 6-206(a)3 is, therefore, "narrowly drawn", since it provides for suspension or revocation only where there is a high probability of risk to the public safety.

Finally, the plaintiff argues that the amount of time which elapsed between his conviction and his notice of revocation indicates that the Secretary did not consider the situation to be an emergency. (Appellee's brief, pp. 26-27). The facts indicate that plaintiff's final conviction occurred on March 31, 1975 and the Secretary did not mail the Notice of Revocation until May 28, 1975 (revocation to begin June 6, 1975). It is respectfully submitted that this delay does not indicate a lack of concern about the problem, but rather it was occasioned by the fact that the Secretary must process a large number of suspensions and revocations each year and a delay is practically inevitable.

During the year 1976 the Secretary processed 57,785 revocations and suspensions:[6]

	Suspensions entered 1976	Revocations entered 1976
Sec. 6-206 (a) 1.	None	978
(a) 2.	48,572	15
(a) 3.	12	389
(a) 4.	83	11
(a) 5.	99	2
(a) 6.	2,550	350
(a) 7.	None	None
(a) 8.	None	None
(a) 9.	35	42
(a) 10.	33	3
(a) 11.	486	None
(a) 12.	304	7
(a) 13.	27	None
(a) 14.	1,273	149
(a) 15.	1	None
(a) 16.	1,833	None
(a) 17.	None	None
(a) 18.	None	None

Therefore, the delay which occurred in the instant case between plaintiff's final conviction and the mailing of his Notice of Revocation did not indicate that the Secretary did not consider that the situation merited prompt action, but rather it was occasioned by the problems presented in processing the volume of suspensions and revocations which occur in this State. The

[6] Statistics were supplied by Robert W. Cooney, Administrator, Driver Performance Division, Driver Services Department. It should be noted that the number of revocations under § 6-206(a)3 is lower than average due to the fact that subsequent to the decision of the three judge court in the instant case, the Secretary did not revoke licenses under this section. In 1975, 2,378 revocations were entered pursuant to this section.

speedy removal of drivers who have demonstrated careless driving habits is an emergency situation sufficient to come within the exception to the rule which requires a preliminary hearing and, therefore, the lack of such a hearing in the instant case did not deprive plaintiff of due process.

CONCLUSION

For the foregoing reasons, Appellant respectfully urges this Honorable Court to reverse the judgment of the three-judge district court which permanently enjoined the enforcement of the Illinois statute on the ground that it violates due process of law.

Respectfully submitted,

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
160 North LaSalle Street, Suite 900,
Chicago, Illinois 60601 (793-3500),
Attorney for Appellant.

PAUL J. BARGIEL,
PATRICIA ROSEN,
STEPHEN R. SWOFFORD,
MARY STAFFORD,
Assistant Attorneys General,
160 North LaSalle Street, Suite 800,
Chicago, Illinois 60601 (793-5635),
Of Counsel.

February 24, 1977